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TRANSCRIPT OF RECORD

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U.S. D.C.

Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR, PETITIONER,

vs.

RAY L. RILEY, COMPTROLLER OF THE STATE OF CALIFORNIA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 23, 1937.

CERTIORARI GRANTED MAY 24, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR, PETITIONER,

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1935.

No. 3163.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL.,
RESPONDENTS, APPELLANTS,

v.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER, APPELLEE.

TRANSCRIPT OF RECORD OF DISTRICT COURT.

No. 4292, EQUITY DOCKET.

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR U/W ROBERT H. HUNT, PETITIONER,

v.

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS ET AL., RESPONDENTS.

APPEAL OF RAY L. RILEY, CONTROLLER, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY, AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER.

The Bill of Complaint in this cause was filed in the clerk's office on the twenty-eighth day of February, A. D. 1936, and was duly entered at the December Term of this court, A. D. 1935, and is in the words and figures following:

BILL OF COMPLAINT IN THE NATURE OF A BILL OF INTERPLEADER.

[Filed February 28, 1936.]

WORCESTER COUNTY TRUST COMPANY, Executor u/w of Robert H. Hunt, Complainant,

v.

HENRY F. LONG, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts,

RAY L. RILEY, Controller of the State of California,

W. H. H. GENTRY, Inheritance Tax Attorney of the State of California,

FRANK P. SPROUL, Inheritance Tax Appraiser of the State of California, Respondents.

The complainant brings this bill under the provisions of The Federal Interpleader Act, as amended, being Public No. 422 of the 74th Congress, a copy of which is attached hereto, and states:

1. The complainant is a corporation duly established under the laws of the Commonwealth of Massachusetts and having a usual place of business at Worcester, in the District of Massachusetts.

2. The respondent, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, is a citizen of Massachusetts and a resident of Topsfield, Massachusetts, with a business address at Boston, in said District.

3. The respondents, Ray L. Riley, Comptroller of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, are both citizens of California with business addresses at Sacramento, California in the Northern District of California. The respondent, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, is a citizen of California with business address at 609 State Building, Los Angeles, California, in the Southern District of California.

4. On June 26, 1935, the Probate Court for Worcester County, Massachusetts, allowed the will of Robert H. Hunt, and appointed your complainant executor under that will of the said Robert H.

Hunt, who died on June 11, 1935, possessing at the time of his death certain real estate in California, sizeable bank deposits both in Worcester, Massachusetts, and in Los Angeles, California, and considerable intangible personal property, the bulk of which is in the custody and possession of your complainant in Worcester, Massachusetts.

5. On July 29, 1935, in ancillary proceedings in California the Security-First National Bank of Los Angeles was at the request of your complainant appointed administrator with the will annexed of the Estate of said Robert H. Hunt by the Superior Court of the State of California in and for the County of Los Angeles.

6. Not only has your complainant as said executor in its custody and possession money and property in amount and value exceeding $500 to which the several tax officials of Massachusetts and California, respondents herein, claim to be entitled adversely to each other, but also under the applicable statutes of Massachusetts (General Laws, chapter 65, section 1, 6 as Amended, chapter 65A and chapter 480 of the Acts of 1935) and California (section 2 of chapter 821 of the Laws of 1921 as Amended, and section 3 of chapter 358 of the Laws of 1935) your complainant is under an obligation to pay, adjust and settle any and all estate, inheritance and succession taxes to said tax officials of the States of Massachusetts and California, respondents herein, irrespective of any demands made therefor, and said respondent tax officials of both States are claiming to be entitled to the benefits thereof.

7. Your complainant is informed and believes and therefore alleges that under the provisions of said tax statutes of each of said States a tax lien is imposed on all property of the said Robert H. Hunt estate of which your complainant is executor until all taxes assessed by said tax officials are paid and that the several respondents will claim and are claiming to be entitled to the benefits of such liens.

8. Your complainant is informed and believes and therefore alleges that the respondent Henry F. Long, commissioner as aforesaid, has determined that the said Robert H. Hunt died domiciled in Massachusetts, and is asserting and has threatened and is about

to assess and attempt to collect from your complainant and the Estate in its charge, estate and succession taxes under the provisions of said Massachusetts tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in Massachusetts the estate and succession taxes under said provisions of Massachusetts tax statutes would be a comparatively nominal amount.

9. Your complainant is informed and believes and therefore alleges that the respondents, Ray L. Riley, comptroller as aforesaid, W. H. H. Gentry, inheritance tax attorney as aforesaid, and Frank P. Sproul, inheritance tax appraiser, as aforesaid, have each severally or as agent one for another, individually or by their agent or agents, determined that the said Robert H. Hunt died domiciled in California and are asserting and have threatened and are about to assess and attempt to collect from your complainant and the Estate in its charge estate, inheritance and succession taxes under the provisions of said California tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in California the estate, inheritance and succession taxes under said provisions of California tax statutes would be a comparatively nominal amount.

10. That it is impossible in law or fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California and it should not be possible for estate, inheritance and succession taxes to be so asserted, threatened, assessed and collected by the tax officials or representatives of said two States.

11. Your complainant is informed and believes and therefore alleges that there is little likelihood of any controversy between your complainant executor as aforesaid, on the one hand, and the respondent, Henry F. Long, commissioner as aforesaid, on the other hand, as to the Massachusetts taxes, their computation, assessment and collection, if the question of domicile is finally determined, or of any controversy between your complainant executor as aforesaid, on the

one hand, and the respondents, Riley, Gentry, and Sproul, tax officials as aforesaid, on the other hand, as to the California taxes, their computation, assessment and collection, if the question of domicile is finally determined, but that the main controversy relates to a sum of one hundred thousand (100,000) dollars or more in the custody or possession of your complainant and to your complainant's obligations with respect thereto and under said tax laws, the tax officials of the two States, respondents herein, each claiming adversely to one another said sum or more.

12. That therefore the threatened collection of both the California and Massachusetts taxes, each based upon an inconsistent claim of domicile, will deprive your complainant and the Estate in its charge of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; that the threatened assessment and collection of both of said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in California and Massachusetts, causing extra expense, preventing distribution, compelling your complainant to maintain large cash reserves at low interest rates or at no interest to cover the threatened taxes and costs of litigation.

13. Your complainant has no adequate remedy at law.

14. Your complainant has given bond payable to the clerk of this court in such amount and with such surety as this court has deemed proper conditioned upon compliance by your complainant with the future order or decree of this court with respect to the subject matter of this controversy.

Wherefore your complainant prays:

1. That this court enter a temporary restraining order enjoining the respondents and each of them, their agents and servants, until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as admin-

istrator with the will annexed of the Estate of Robert H. Hunt, or your complainant.

2. That this court determine the domicile of said Robert H. Hunt at the date of his death, and then enter a permanent order enjoining those respondents who are the officials of the non-domiciliary state, their agents and servants, from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined.

3. That each of the respondents be required to set forth and plead their several adverse claims to said money and property in the custody and possession of your complainant and to any one or more of the benefits arising by virtue of the complainant's obligation to pay estate, inheritance or succession taxes on account of the death of said Robert H. Hunt.

4. That this court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's said obligation.

5. That this court determine the sum owed to any one or more of the respondents by your complainant.

6. That this court adjudge that your complainant is under no further obligation to any one or more of the respondents upon compliance by your complainant with such decree as this court may make in this case.

7. That your complainant be awarded its costs including a reasonable attorney's fee to be deducted from any amount which may be decreed due to respondents.

8. That this court order such other and further relief as is proper.

WORCESTER COUNTY TRUST COMPANY, [SEAL]
by WILLIAM J. MCKINLEY,
Vice-President and Trust Officer.

COMMONWEALTH OF MASSACHUSETTS.

WORCESTER, ss. February 27, 1936.

Then personally appeared William J. McKinley, to me known to be the vice-president and trust officer of the Worcester County Trust Company, and made oath that the facts contained in the foregoing

petition by him subscribed are true except such as are made on information and belief and as to those that he believes them to be true.

Before me, BRADLEY B. GILMAN,

[SEAL] *Notary Public.*

[PUBLIC—NO. 422—74TH CONGRESS] [S. 1277]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader—Twenty-sixth:—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem

proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant

or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader", approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

On the said twenty-eighth day of February A. D. 1936, the following Bond in the sum of two hundred thousand dollars ($200,000) was filed and approved by the court, the Honorable George C. Sweeney, District Judge, sitting:

BOND.

[Filed and approved February 28, 1936.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND BALTIMORE

Know all Men by these Presents, That we, Worcester County Trust Company, a banking corporation duly established by law, and having an usual place of business in Worcester, County of Worcester, and Commonwealth of Massachusetts, executor of the will of Robert H. Hunt, as Principal; and the Fidelity and Deposit Company of Maryland, a corporation duly organized under the laws of the State of Maryland, and having an usual place of business in Boston, County of Suffolk, Commonwealth of Massachusetts, as Surety, are holden and stand firmly bound and obliged unto the Clerk of the District Court of the United States for the District of Massachusetts, in the full and just sum of two hundred thousand (200,000) dollars, to be

paid unto the said Clerk of the District Court of the United States for the District of Massachusetts, to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

In Witness Whereof, the said Principal and the said Surety have caused this bond to be duly executed by their various officers thereunto duly authorized and their corporate seals to be hereunto affixed this twenty-eighth day of February, A. D. 1936.

The Condition of this Obligation is such, That, Whereas, the said Worcester County Trust Company, executor of the will of Robert H. Hunt, complainant, has begun a suit in equity in said District Court of the United States, for the District of Massachusetts, by a complaint in the nature of a bill of interpleader against Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, claimants, in the matter of inheritance taxes to be collected from the estate of Robert H. Hunt.

Now, Therefore, if the said complainant, as Principal, shall comply with the future order or decree of the court with respect to the subject matter of the controversy, then this obligation shall be null and void; otherwise shall remain in full force and virtue.

WORCESTER COUNTY TRUST COMPANY [SEAL]
executor u/w of Robert H. Hunt
By WILLIAM J. MCKINLEY
Vice-President and Trust Officer.

Signed, sealed and delivered in the presence of
MERRILL S. JUNE

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND [SEAL]
By GORDON B. HEBB, *Attorney-in Fact.*

Attest: MARY M. HENCHEY *Resident Assistant Secretary.*

Approved 2-28-36.
GEO. C. SWEENEY, *D. J.*

WORCESTER COUNTY TRUST COMPANY TRUST DEPARTMENT
344 Main Street Worcester, Massachusetts
William J. McKinley Vice President & Trust Officer
Clarence A. Evans Vice President & Asst. Trust Officer
Ralph C. Ordway Assistant Trust Officer

February 28, 1936

I, R. C. Ordway, Secretary of the Trust Committee, hereby certify that the following vote was passed at a meeting held on February 18, 1936:

Robert H. Hunt Estate

Voted: That the Worcester County Trust Company, formerly called the Worcester Bank & Trust Company, as it is Executor u/w of Robert H. Hunt, late of Worcester, Massachusetts, take such legal proceedings in State or Federal Courts, whether at law or in equity, and whether by injunction proceedings, interpleader proceedings, or otherwise, as may be necessary or advisable on advice of counsel to determine the domicile of the decedent in Massachusetts or in California and to determine the liability of the executor or of the estate wherever situated to any and all state inheritance taxes, and that William J. McKinley, Vice President and Trust Officer, or Harry R. McIntosh, Treasurer, be and each is hereby authorized in the name and behalf of the Worcester County Trust Company, as Executor u/w of the said Robert H. Hunt, to execute any complaints, petitions, motions, or other instruments, necessary or advisable in said proceedings and to take such other action as may be necessary or advisable in connection therewith.

A true copy.
Attest: R. C. ORDWAY, *Secretary of Trust Committee* [SEAL]

On the same day, the following Restraining Order and Order of Notice was issued:

RESTRAINING ORDER AND ORDER OF NOTICE.

February 28, 1936.

SWEENEY, J. Upon the filing of the bill of complaint in the nature of a bill of interpleader, duly verified, praying among other things for the determination of the domicile of Robert H. Hunt, of whose estate the complainant has been appointed executor, and the liability of said estate and said executor to state taxation, and it appearing that there is danger of irreparable injury from delay to the complainant, it is

Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California and each of them, their agents and servants, be, and they are hereby, temporarily restrained until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant.

And it is further ordered that the complainant give notice to each of the said respondents to appear before this court on Monday, April 6, 1936, at two o'clock in the afternoon, at the Federal Building, Boston, Massachusetts, to show cause why the prayers of said complainant should not be granted, and it is further

Ordered that notice be given by the complainant by serving a summons and a copy of this order upon each of said respondents, said service to be made by the United States marshals for the respective districts wherein said respondents reside or may be found.

By the Court,

EDITH G. ROLLINS,

Deputy Clerk.

2-28-36.

GEO. C. SWEENEY, *D. J.*

On the ninth day of March, A. D. 1936, the United States marshal for the District of Massachusetts made the following Return into court:

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA

UNITED STATES DISTRICT OF MASSACHUSETTS, ss.

I hereby certify and return, that on the third day of March 1936, I received the within subpoena in equity, and on the same day made service upon the within named Henry F. Long, Commissioner of Corporations for the Commonwealth of Massachusetts, by giving to him in hand, a true and attested copy of the within subpoena in equity.

JOHN J. MURPHY, *United States Marshal,*
by JOS. M. MAHER,
Deputy United States Marshal.

On the thirteenth and sixteenth days of March, A. D. 1936, the United States marshals for the Northern District of California and the Southern District of California made the following Returns into court:

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named Frank P. Sproul, Inheritance Tax Appraiser of the State of California, by handing to and leaving a true and correct copy thereof with Frank P. Sproul, Inheritance Tax Appraiser of the State of California, personally at Los Angeles in said District on the third day of March, A. D. 1936.

ROBERT E. CLARK, *United States Marshal,*
by A. S. MERRICK, *Deputy.*

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named W. H. H. Gentry, Inheritance Tax Attorney for the State of California, by handing to and leaving a true and correct copy thereof with W. H. H. Gentry personally at Sacramento, Calif., in said District on the third day of March, A. D. 1936.

GEORGE VICE, *United States Marshal,*
by HAYDEN SAUNDERS, *Deputy.*

MARSHAL'S RETURN OF SERVICE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, ss.

I hereby certify and return that I served the annexed restraining order and order of notice on the therein-named Ray L. Riley, Controller of the State of California, by handing to and leaving a true and correct copy thereof with Ray L. Riley, personally at Sacramento, Calif., in said District on the third day of March, A. D. 1936.

GEORGE VICE, *United States Marshal,*
by HAYDEN SAUNDERS, *Deputy.*

This cause was thence continued to the present March Term, A. D. 1936, when, to wit, March 17, 1936, the following Motion to Dismiss of Ray L. Riley, W. H. H. Gentry, and Frank P. Sproul is filed:

MOTION TO DISMISS BY THE RESPONDENTS RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA, AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, APPEARING SPECIALLY ONLY BUT NOT GENERALLY, FOR THAT PURPOSE.

[Filed March 17, 1936.]

Now come the respondents, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only, and not generally, and solely for the purpose of objecting to the jurisdiction of this court over them in this cause, and move the court to dismiss the bill of complaint as to them for the following reasons:

1. It appears from the face of the bill that none of these respondents are making any claims as citizens of a state, but that the acts or threatened acts of the alleged claimants complained of are acts which, if done or to be done by them at all, would be done by them as public officers or representatives of the State of California, and, therefore, this court is without jurisdiction over them under the so-called Federal Interpleader Act as amended, referred to in the bill, or otherwise, to entertain the bill of complaint or grant any of the relief prayed for therein.

2. It appears from the face of the bill that these respondents are made parties thereto, solely in their capacity as public officers and representatives of the State of California in a matter in which the pecuniary interests of that State are involved, and, in the absence of its consent, this court has no jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States.

3. Under the law of California none of these respondents have made any legal determination, nor have they any power or authority to legally determine, that the decedent Robert H. Hunt was domiciled in or a resident of the State of California at the time of his death, nor have they threatened in any way to make any such determina-

tion, nor have any of these respondents any authority whatsoever, nor have they threatened, to levy or assess any inheritance, estate, or other tax against the estate of said Robert H. Hunt, or to collect any such tax and will have no such authority except and until such a tax, if any, may be decreed, levied and/or assessed by the Superior Court of the State of California in and for the County of Los Angeles in the ordinary and due course of the proceedings in said court referred to in paragraph 5 of the bill of complaint, which court has the sole and exclusive jurisdiction and authority to hear and determine all questions in relation to any inheritance or estate tax and to state or levy and determine the amount, if any, thereof, and none of said respondents have any authority whatsoever other than as may be set forth in Section 445 of the Political Code of California and in the Inheritance Tax Act, Chapter 821, General Laws, in effect August 2, 1921, and amendments thereto, which authority they have only in their capacity as public officials and representatives of the State of California, and that therefore, the plaintiff's bill is in substance against the State of California, and this court is without jurisdiction over these respondents in view of the eleventh amendment of the Constitution of the United States.

In so far as they may properly do so without thereby waiving their special appearance and without submitting themselves generally to the jurisdiction of this court, these respondents further desire to call this court's attention to the following, which appear from the face of the bill, as further reasons for the granting of this motion, in that they show that the alleged cause of action, if any there be, is not one within the purview of the so-called Federal Interpleader Act as amended, and that therefore, there has been no valid service of process on these respondents and this court has no jurisdiction over them, for the validity of the service of process and jurisdiction of this court over these respondents must be grounded, if at all, upon the applicability of said Act, as amended, to the circumstances alleged:

(a) The facts alleged in the bill are insufficient in equity to sustain a bill of interpleader or a bill in the nature of interpleader.

(b) It appears from the face of the bill that there are not two or more adverse claimants claiming to be entitled to the same money or property of the plaintiff.

(c) The plaintiff has, under the law of the State of California, a plain, adequate and complete remedy at law and this court has no power to grant the relief prayed for.

Wherefore, these respondents pray that this court dismiss the bill of complaint as to them, with costs.

Respectfully submitted,

By their Attorneys,

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
W. H. H. GENTRY.

On the said seventeenth day of March, A. D. 1936, the following Special Appearance of Ray L. Riley, Controller, Frank P. Sproul, Inheritance Tax Appraiser, and W. H. H. Gentry, Inheritance Tax Attorney, of the State of California is filed:

SPECIAL APPEARANCE.
[Filed March 17, 1936.]

We appear for Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, specially only, but not generally, and without submitting said respondents or any of them generally to the jurisdiction of this court, but for the sole purpose of objecting to the jurisdiction of this court over said respondents or any of them.

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
Address: One Federal Street, Boston, Massachusetts.
W. H. H. GENTRY,
Inheritance Tax Attorney,
Sacramento, California.

On the eighteenth day of said March, the following Motion to Vacate Restraining Order is filed:

MOTION BY THE RESPONDENTS, RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA, AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, APPEARING SPECIALLY ONLY, BUT NOT GENERALLY FOR THAT PURPOSE, TO VACATE THE TEMPORARY RESTRAINING ORDER WHICH WAS GRANTED FEBRUARY 28, 1936.

[Filed March 18, 1936.]

Now comes the respondents, Ray L. Riley, Comptroller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only, and not generally, and solely for the purpose of objecting to the jurisdiction of this court over them in this cause, and move this court for the following reasons to vacate the temporary restraining order which was granted by this court on February 28, 1936:

1. It appears from the face of the bill that none of these respondents are making any claims as citizens of a state, but that the acts or threatened acts of the alleged claimants complained of are acts which, if done or to be done by them at all, would be done by them as public officers or representatives of the State of California, and, therefore, this court was without jurisdiction over them under the so-called Federal Interpleader Act as amended, referred to in the bill, or otherwise, to grant the restraining order.

2. It appears from the face of the bill that these respondents are made parties thereto, solely in their capacity as public officers and representatives of the State of California in a matter in which the pecuniary interests of that State are involved, and, in the absence of its consent, this court has no jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States, and the restraining order is, therefore, invalid by reason of such lack of jurisdiction.

3. Under the law of California none of these respondents have

any power or authority to determine the domicile of the decedent for the purpose of the California inheritance, succession or estate taxes, nor to determine the amount of such taxes or assess them, but the Superior Court of the State of California in and for the county of Los Angeles has the sole and exclusive jurisdiction, power and authority in such matters, and these respondents have only such power and authority in the premises as is set forth in Section 445 of the Political Code of California and in the Inheritance Tax Act, Chapter 821, General Laws, in effect August 2, 1921, and amendments thereto, which authority they have only in their capacity as public officials and representatives of the State of California, and, therefore, this court is without jurisdiction over these respondents in view of the Eleventh Amendment of the Constitution of the United States, and the restraining order is invalid by reason of such lack of jurisdiction. Respectfully submitted,

By their Attorneys,

NORMAN W. BINGHAM, Jr.,
GEORGE S. FULLER,
W. H. H. GENTRY.

Thereupon, to wit, March 23, 1936, the Honorable Elisha H. Brewster, District Judge, sitting, said above mentioned motion of Ray L. Riley et al. to vacate the temporary restraining order is heard in part by the court and it is ordered by the court that the time for filing answer by defendant Henry P. Long be extended to March 30, 1936, present injunction to stand.

On the said twenty-third day of March, A. D. 1936, the following general Appearance for respondent, Henry F. Long, is filed:

APPEARANCE.

[Filed March 23, 1936.]

Worcester County Trust Co., Executor,

v.

Henry F. Long, Commissioner et als.

The clerk will enter my appearance for the respondent, Henry F. Long.

PAUL A. DEVER,
Attorney General of Massachusetts,
by RAYMOND H. FAVREAU,
Assistant Attorney General.

On the thirty-first day of March, A. D. 1936, the following Answer of Henry F. Long, Commissioner, is filed by consent:

ANSWER OF THE RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

[Filed by consent March 31, 1936.]

1. The respondent admits the allegations in paragraph 1 of plaintiff's bill of complaint.

2. The respondent admits the allegations of paragraph 2 of plaintiff's bill of complaint.

3. The respondent neither admits nor denies the allegations in paragraph 3 of the plaintiff's bill of complaint but leaves the plaintiff to proof of the same.

4. The respondent admits allegations in paragraph 4 of the plaintiff's bill of complaint.

5. The respondent admits allegations in paragraph 5 of the plaintiff's bill of complaint.

6. Answering paragraph 6 respondent says that as Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts he is entitled to collect all estate, inheritance, legacy and succession taxes due from the plaintiff as executor of the will of Robert H. Hunt, deceased, by reason of the fact that Robert H. Hunt was domi-

cited in the Commonwealth of Massachusetts at the time of his death, and your respondent denies that the California officials named are entitled to collect any such taxes from plaintiff.

7. Answering paragraph 7 of plaintiff's bill of complaint your respondent is without knowledge of the tax laws of the State of California but avers that under the laws of the Commonwealth of Massachusetts a tax lien is imposed on all property of the Estate of said Robert H. Hunt until all taxes assessed by your respondent are paid, and your respondent claims that he is entitled to the benefits of such liens.

8. Your respondent avers that said Robert H. Hunt was domiciled in Massachusetts at the time of his decease, and that as Commissioner of Corporations and Taxation of Massachusetts he is entitled to collect from plaintiff all estate, inheritance, legacy and succession taxes due.

9. The respondent neither admits nor denies the allegations in paragraph 9 of the plaintiff's bill of complaint but leaves the plaintiff to prove the same.

10. The respondent is without knowledge as to whether it is impossible in law or in fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California but denies that said decedent was domiciled in California.

11. The respondent being of opinion that the complainant and the respondent in this case are of the one understanding that Robert H. Hunt was domiciled in Massachusetts at the time of death there can be no controversy, and your respondent therefore answers that he is entitled to collect the amount and that California is in no way to be considered as the place of domicile of the said Robert H. Hunt.

12. Answering paragraph 12 the respondent says that an attempt on the part of the officials of California to collect estate, inheritance, legacy and succession taxes from the plaintiff may deprive your respondent of his right to collect such taxes from the estate of the decedent.

13. The respondent is without knowledge as to whether the complainant has an adequate remedy at law.

14. The respondent understands that a bond has been filed.

HENRY F. LONG,
Commissioner of Corporations and Taxation of The Commonwealth of Massachusetts.

PAUL A. DEVER, *Attorney General,*
by RAYMOND H. FAVREAU,
Assistant Attorney General.

On the thirty-first day of March, A. D. 1936, the Honorable Elisha H. Brewster, District Judge, sitting, said cause comes on to be further heard, on the motion to dismiss of defendants Ray L. Riley, W. H. H. Gentry and Frank P. Sproul and is thence taken under advisement.

At the same term, to wit, April 2, 1936, the following Motion by Complainant for a Temporary Injunction is filed:

MOTION BY COMPLAINANT FOR A TEMPORARY INJUNCTION.
[Filed April 2, 1936.]

Now comes the complainant, Worcester County Trust Company, executor under the will of Robert H. Hunt, and moves this court to enter a temporary injunction enjoining the respondents and each of them, their agents and servants, until further order of this court, from instituting or prosecuting any suit or proceeding in any state court or in any United States court on account of any claims for taxes, liens or penalties against money or property in the custody or possession of the complainant, and from instituting or prosecuting any suit or proceeding in any state court or in any United States court on account of the complainant's obligation to pay, adjust and settle any and all estate, inheritance and succession taxes to or with the respondents, tax officials of the States of Massachusetts and California.

Respectfully submitted,

WORCESTER COUNTY TRUST COMPANY,
Executor u/w Robert H. Hunt,
by MERRILL S. JUNE,
BRADLEY B. GILMAN,
its Attorneys.

On the sixth day of said April, 1936, the Honorable Elisha H. Brewster, District Judge, sitting, on the return day of the restraining order and order of notice, this cause comes on to be heard on the prayer for preliminary injunction and on plaintiff's motion for a temporary injunction, the restraining order being continued until further order of the court and the other matters being continued for one week, decision being reserved.

On the thirteenth day of April, 1936, said cause comes on for further hearing, the Honorable Elisha H. Brewster, District Judge as aforesaid, sitting, on the plaintiff's motion for temporary injunction and it is ordered by the court that the temporary restraining order now in force be continued in force to April 21, 1936, said order being again continued in force to April 27, 1936.

On the twenty-seventh day of April, A. D. 1936, an opinion of the court is announced, denying Respondent's Motion to Dismiss, the following Decree being entered in accordance therewith:

DECREE DENYING RESPONDENT'S MOTION TO DISMISS.

April 27, 1936.

BREWSTER, J. This cause came on to be heard at this term upon motion of the respondents, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, to dismiss the bill of complaint for want of jurisdiction and was argued by counsel, and thereupon, upon consideration thereof, on the twenty-seventh day of April, 1936, the Honorable Elisha H. Brewster, District Judge, announced his decision and caused a minute entry thereof to be made as follows:

It is hereby ordered, adjudged and decreed that the motion of the respondents, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, to dismiss the bill of complaint for want of jurisdiction be and hereby is denied.

ELISHA H. BREWSTER,

District Judge.

Also on the said twenty-seventh day of April, A. D. 1936, said cause comes on for further hearing on the matter of the plaintiff's motion for temporary injunction and it is ordered that the restraining order be continued in force to April 29, 1936, injunction to issue.

On the twenty-eighth day of April, A. D. 1936, the following Order of Injunction is entered:

ORDER OF INJUNCTION.

April 28, 1936.

BREWSTER, J. Upon the filing of the complaint in the nature of a bill of interpleader, duly verified, praying among other things for the determination of the domicile of Robert H. Hunt, of whose estate the complainant has been appointed executor, and the liability of said estate and said executor to state taxation, and after hearing upon motions by the respondents, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of the State of California, to dismiss the complaint as to them for want of jurisdiction of this court over them, and to vacate the temporary restraining order heretofore granted, and it appearing there is danger of irreparable injury to the complainant, it is

Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and each of them, their agents, and servants, be, and they are hereby, enjoined until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant.

Ordered that notice be given by the complainant by serving a summons and a copy of this order upon each of said respondents, said service to be made by the United States marshals for the respective districts wherein said respondents reside or may be found.

By the Court,

JOHN E. GILMAN, JR.,

Deputy Clerk.

April 28, 1936.

E. H. B.,
D. J.

On the said twenty-eighth day of April, A. D. 1936, the following Motion for Stay of Proceedings Pending Appeal is filed and allowed:

MOTION BY RESPONDENTS, RAY L. RILEY, CONTROLLER ET AL., FOR STAY OF PROCEEDINGS PENDING APPEAL.

[Filed and allowed April 28, 1936.]

Now come the respondents, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, appearing specially only as set forth in their special appearance heretofore filed, and move that, whereas this court, on April 28, 1936, has granted an injunction against said respondents, and whereas said respondents intend to take an appeal, the proceedings in other respects in this court be stayed for a period of thirty days after April 28, 1936, and, if said respondents take their appeal within that time, thereafter until the expiration of thirty days after said appeal shall have been finally determined, and that the time within which said respondents should be required to file their answer or other pleadings be correspondingly extended.

By their Attorneys,

NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER,
W. H. H. GENTRY,
BURNHAM, BINGHAM, PILLSBURY, DANA & GOULD.

Allowed April 28, 1936.

E. H. B.,
D. J.

From the aforementioned order of injunction and decree denying motion to dismiss, Ray L Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of Cali-

fornia, claim an appeal to the United States Circuit Court of Appeals for the First Circuit on the twentieth day of May, A. D. 1936, which appeal was allowed by the court on the same day.

OPINION.

April 27, 1936.

BREWSTER, J. This proceeding is brought under the new Federal Interpleader Act (Pub. No. 422, approved January 20, 1936). This Act amends Section 24 of the Judicial Code as amended by inserting at the end a new subparagraph 26. The material provisions of this amendment follow:

It confers upon the court original jurisdiction

"(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any . . . corporation, . . . having in . . . its custody or possession money or property of the value of $500 or more, . . . or being under any obligation written or unwritten to the amount of $500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising . . . by virtue of any such obligation; and

(ii) . . .

(b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for

all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same."

The complainant is the executor under the will of Robert H. Hunt. The respondents named in the proceeding are officials of the State of California and the Commonwealth of Massachusetts. The respondent Long has appeared generally and filed an answer to the bill. A special appearance has been entered on behalf of the California respondents for the purpose of moving to dismiss the bill and to dissolve outstanding restraining orders. Inasmuch as the motion to dissolve injunctions will stand or fall with the motion to dismiss, it will only be necessary to consider the latter. The motion, of course, admits, for present purposes, all facts properly pleaded in the bill of complaint.

It is alleged that the respondent Henry F. Long is Commissioner of Corporations and Taxation in the Commonwealth of Massachusetts and a citizen of Massachusetts; that the respondent Riley is comptroller, the respondent Gentry, inheritance tax attorney, and the respondent Sproul, inheritance tax appraiser of the State of California, all citizens of California.

On June 11, 1935, Robert H. Hunt died testate, leaving real estate and bank deposits in California and bank deposits in Massachusetts and considerable intangible personal property, most of which is in

the custody and possession of the complainant in Worcester, Massachusetts.

On June 26, 1935, the will of said Hunt was admitted to probate in the Probate Court for the County of Worcester, Massachusetts. On July 29, 1935, ancillary proceedings were instituted in California pursuant to which the Security-First National Bank of Los Angeles was appointed administrator with the will annexed of the Estate of said Hunt by the Superior Court of the State of California in and for the County of Los Angeles.

It is alleged that the complainant is under obligations to pay any and all estate, inheritance and succession taxes to the officials of the State of California and the Commonwealth of Massachusetts, and that the officials of each state are asserting the right to assess and collect succession and inheritance taxes upon the transfer of intangibles upon the theory that the decedent, at the time of his death, was domiciled in the respective state; that there is involved in this controversy over $100,000, which sum the complainant has in its custody, and the complainant has given bond in accordance with the provisions of the said Interpleader Act.

It is further alleged that the threatened collection of both the California and Massachusetts taxes, each based upon an inconsistent claim of domicile, will deprive the estate of property without due process of law and will deny to it equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

The complainant has caused process to issue to the respondents in Massachusetts and in California and has secured a temporary restraining order against each from taking any further proceedings to assess, determine or collect the inheritance taxes due from the estate. Complainant prays that this court require the respondents to plead their adverse claims to the money and property in the possession of the complainant, or to the benefits arising by virtue of the complainant's obligation to pay the inheritance taxes. The complainant further prays that the court determine the domicile of the decedent, the persons entitled to the said money, property or benefits, and the sum owed to any of the respondents; and that the court permanently en-

join respondents of the non-domiciliary state from taking any action to determine or collect inheritance taxes based upon domicile except as determined by this court.

Complainant furthermore asks that it be discharged of all further obligations to the respondents upon compliance by it with such decree as the court may make in the case.

It thus appears from the allegations of the bill that the taxing authorities in the two states are asserting conflicting rights to compute a legacy and succession tax, based upon the assumption that the decedent was domiciled in their respective states, and this court is asked not only to determine which of the states is entitled to tax transfers of intangibles but it is also required to determine the amount of the tax due each state and enter a decree requiring the payment of the taxes thus determined, which payment shall operate to discharge the Massachusetts executor of all liability for such taxes.

It is now settled law that intangibles have only one situs for the purpose of inheritance or succession taxes, and that that situs is in the domicile of the decedent at the time of his death.

First National Bank of Boston, Excr. v. *Maine,* 284 U. S. 312;

The Farmers Loan & Trust Co. Excr. v. *Minnesota,* 280 U. S. 204;

City Bank Farmers Trust Co. Excr. v. *Schnader,* 291 U. S. 24.

It is equally well settled that a person can have at one time only one domicile, however many places of residence he may have maintained in his lifetime.

Tax Collector of Lowell v. *Hanchette,* 240 Mass. 557;
Commonwealth v. *Bogigian,* 265 Mass. 531;
United States ex rel Thomas v. *Day,* 29 F.(2d) 485.

It is, therefore, obvious that if the taxing officials of both of these states carry out their threat of imposing an inheritance tax upon the transfer of decedent's intangibles, one or the other of the states will be violating the Fourteenth Amendment.

First National Bank of Boston, Excr. v. *Maine, supra; Anglo-California Trust Co.* v. *Riley,* 220 Cal. 26.

I fully appreciate the difficulties encountered in preventing this unconstitutional exaction if the complainant cannot avail itself of the Interpleader Act. The difficulties are well illustrated in the case of *Estate of John T. Dorrance* where the States of Pennsylvania and New Jersey have each exacted a tax of several million dollars upon the transfer of intangibles which Dorrance left at the time of his death. The Pennsylvania courts of last resort (*Dorrance, Estate,* 309 Pa. 151) held that Dorrance was domiciled in that state, and, so far as the litigation has proceeded in the New Jersey courts they have been unanimous in holding that Dorrance was domiciled in New Jersey.

In re Dorrance, 115 N. J. Eq. 268; 116 N. J. Eq. 204; 13 N. J. Misc. 168.

See also *Hill* v. *Martin,* 296 U. S. 393 affirming 12 F. Supp. 746.

I can very readily agree with complainant's counsel that the question here presented is one of unusual public interest. A short cut to the answer would be to hold that the two states were the adverse claimants and that consequently the jurisdictional requirement of the statute was not met since a state cannot be a citizen. I do not believe, however, that the matter can or ought to be dismissed in so summary a fashion.

It is the contention of the respondents that the proceeding is one against states and therefore is prohibited by the Eleventh Amendment to the Constitution of the United States which provides that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced, or prosecuted, against one of the United States by citizens of another State.

The recent Act has extended the scope of earlier Interpleader acts by bringing within its ambit not only bills of interpleader but bills in the nature of interpleader. These proceedings are by the terms of the Act described as suits in equity and must be regarded as suits within the purview of the Eleventh Amendment. The matter is reduced to the single question whether, on the allegations of the bill,

we must hold that the suit is against the state of California, the respondent officials named in the proceedings being merely nominal parties.

The fact that the respondents are joined in their official capacity as representatives of the State does not necessarily defeat jurisdiction. In suits by or against administrators or guardians, the jurisdictional diversity of citizenship is determined with reference to the citizenship of the administrator or the guardian without regard to the citizenship of the heirs or the ward, even though these have a very definite and substantial interest in the outcome of the litigation.

Rice v. *Houston,* 13 Wall. 66;
Amory v. *Amory,* 95 U. S. 186;
Continental Insurance Co. v. *Rhoads,* 119 U. S. 237;
Mexican Central Ry. Co. v. *Eckman,* 187 U. S. 429.

The rule has been extended to cases where the administrator sues for the benefit of certain named beneficiaries entitled by statute to the amount recovered.

Mecom v. *Fitzsimmons Drilling Co.,* 284 U. S. 183.

It is to be noted that, in the case of a guardian, the rule applies only if the laws of the State of his appointment give him the right to sue in his own name on behalf of the ward. In a suit by a guardian ad litem or next friend, the citizenship of the minor controls.

Voss v. *Neineber,* 68 F. 947;
Mecom v. *Fitzsimmons Drilling Co., supra.*

It is therefore important to inquire whether any taxing official of California is authorized to sue for the tax in his own name, or must the suit be brought in the name of the State?

An examination of the California statutes leads to the conclusion that the comptroller, one of the respondents named, is the one in whose name the proceedings to recover taxes would probably be brought. While there is no express provision of the statute imposing upon the comptroller the duty of instituting proceedings to recover inheritance taxes, presumably due to the fact that the court in which the estate is administered not only determines but enforces the col-

lection of the taxes, the California statutes, however, do impose a tax upon transfers other than testamentary transfers, and in such cases the comptroller has the duty of instituting appropriate proceedings to collect the tax upon such transfers, and appellate proceedings are prosecuted in his name. In any event, I find nothing in the statute that requires that the suit be brought exclusively in the name of the State of California.

The State is not made a nominal party to these proceedings at bar, but it is now well settled that the jurisdiction of the Federal Court is not to be determined by reference solely to the nominal parties appearing on the record. In several cases it has been held that this court is without jurisdiction to entertain suits against State officials on the ground that, while the suit was nominally against the officials, they were, in fact, against the State as a sovereignty.

Cunningham v. *Macon & Brunswick R. R. Co.*, 109 U. S. 446;
In re Ayers, 123 U. S. 443;
Hagood v. *Southern et al.*, 117 U. S. 52;
Fitts v. *McGhee*, 172 U. S. 516.

On the other hand, in many suits against State officials, the jurisdiction of the court has been upheld.

Davis v. *Gray*, 16 Wall. 203;
Board of Liquidation v. *McComb*, 92 U. S. 531;
Poindexter v. *Greenhow*, 114 U. S. 270;
Pennoyer v. *McConnaughty*, 140 U. S. 1;
Tindal v. *Wesley*, 167 U. S. 204;
Smyth v. *Ames*, 169 U. S. 466;
Prout v. *Starr*, 188 U. S. 537;
Gunter v. *Atlantic Coast Line R. R. Co.*, 200 U. S. 273;
Ex parte Young, 209 U. S. 123;
Sterling v. *Constantin*, 287 U. S. 378;
Missouri v. *Fiske*, 290 U. S. 18.

It is not easy to trace definitely the line which marks the boundary between those cases which have come within the inhibitions of the Eleventh Amendment and those which have not. In many of the

cases the statement approved by the court is to the effect that a suit in equity may be entertained against individuals for the purpose of preventing them, as officers of a State, from enforcing an unconstitutional enactment under the authority of which they were about to commit some specific wrong or trespass, to the injury of plaintiff's right.

Prout v. *Starr, supra;*
Pennoyer v. *McConnaughty, supra;*
In re Tyler, 149 U. S. 164;
Scott v. *Donald,* 165 U. S. 58;
Terrace v. *Thompson,* 263 U. S. 197;
Cavanaugh v. *Looney,* 248 U. S. 453.

But in *Gunter* v. *Atlantic Coast Line R. R. Co., supra,* Mr. Justice White laid down the rule in the following language:

> "A suit against state offcers to enjoin them from enforcing a tax alleged to be in violation of the Constitution of the United States is not a suit against a state within the prohibition of the Eleventh Amendment."

The more recent case of *Sterling* v. *Constantin, supra,* was against the governor and other officials of the State of Texas. In that case the court, speaking through Mr. Justice Hughes, said:

> "*First.* The District Court had jurisdiction. The suit is not against the State. The applicable principle is that where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief."

It is difficult to fully harmonize the decisions in the many cases in which the above doctrine has been applied. I am convinced from my study of them, however, that the weight of authority would support the jurisdiction of a Federal Court to entertain a suit in equity brought to restrain the taxing officials of a State from proceeding to exact an inheritance tax alleged to be in contravention of the Constitution of the United States. The same would be true if the officer,

acting under a valid State law, exceeded the authority conferred by the State.

Sterling v. *Constantin, supra.*

In *Poindexter* v. *Greenhow, supra,* the court points out the distinction between the State and the Government of the State and stresses the point that when the government acts within the sphere of the agency, it is a perfect representative "but outside of that, it is a lawless usurpation".

From an examination of the cases which have denied to the court jurisdiction because of the Eleventh Amendment, it is apparent that the court regarded a suit as one against the State if the purpose of it was to merely test the constitutionality of the statute (*Fitts* v. *McGhee, supra*), or to compel the performance of some direct obligation of the State (*In re Ayers, supra; Hagood* v. *Southern, supra*), or, if the plaintiff attacked the validity of title to property vested in the State (*Cunningham* v. *Macon & Brunswick R. R. Co., supra*), or if the complainant undertook to control the discretion of any State officers (*Board of Liquidation* v. *McComb, supra; Louisiana* v. *Jumel,* 107 U. S. 711). Again, the suit is deemed to be one against the State if it is necessary to join it in order that the decrees of the court may be binding upon it.

After stating the established doctrine respecting actions at law brought against State officials, the court in *Cunningham* v. *Macon & Brunswick R. R. Co., supra,* (page 456) added this language:

> "Courts of equity proceed upon different principles in regard to parties. As was said in *Barney* v. *Baltimore,* 6 Wall, 280, there are persons who are merely formal parties without real interest, and there are those who have an interest in the suit, but which will not be injured by the relief sought, and there are those whose interest in the subject-matter of the suit renders them indispensible as parties to it. Of this latter class the court said, in *Shields* v. *Barrow,* 17 How. 130, 'they are persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without affecting that interest or leaving the controversy in such a condition

that its final disposition may be wholly inconsistent with equity and good conscience.' "

It does not follow, however, that the State is a necessary party if it is only consequentially affected.

Fowler v. *Lindsey,* 3 Dallas 411;
Poindexter v. *Greenhow, supra.*

Tested by those criteria which have been judicially suggested for the determination of the question of jurisdiction, the suit at bar cannot be considered to be a suit against the State; California is not named as a party in the record; the suit is not brought to specifically enforce an obligation of the State; it has no purpose to control the discretion of executive or administrative officers or administering funds actually in the public treasury. Nor is it necessary to make the State a party in order to carry into effect an appropriate decree.

The purpose of this bill is to prevent an illegal or unconstitutional exaction of inheritance taxes from the estate of its testator. Adequate relief will be afforded by a determination of the domicile of the testator and enjoining those charged with the duty of determining the tax liability to the respective states from proceeding so to do in a manner inconsistent with such determination.

It is objected that the respondents have no personal interest in the subject-matter of this interpleader, but in many of the cases in which jurisdiction has been sustained, the respondents were affected only in their official capacity.

The ratio *decidendi* in the cases is clear. In its inception the controversy is one between individuals, the respondent seeking to justify his acts by invoking the authority of a State law. He cannot rest upon the mere assertion of the defense. He is required to establish it. If the law is invalid, or if he has exceeded his authority, his defense fails.

Up to this point I have considered only the question whether it is necessary to treat the proceeding as one against a State not named on the record as a nominal defendant.

For the reasons above outlined, I have reached the conclusion that such a proceeding does not come within the inhibitions of the Eleventh Amendment.

There are other contentions of the respondents to be considered. It is urged that the court is powerless to act in the premises because the determination of the tax under the laws of California is a judicial proceeding, and not an administrative one, as in Massachusetts. The respondent Sproul is an inheritance tax appraiser, appointed by the respondent Riley, as comptroller; and the respondent Gentry is the inheritance tax attorney.

It is quite apparent from an examination of the applicable statutes of California (Inheritance Tax Act of 1921; Inheritance Tax Act of 1935) that the inheritance tax appraiser, designated by the court having jurisdiction over the estate, performs functions which, at least, could be said to be quasi-judicial. This, however, would not prevent this court, under the Interpleader Act, from issuing process or an order of injunction against him. The terms of the Act provide that "Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States Court on account of such money or property or on such instrument or obligation until the further order of the Court; . . . ."

In view of the provisions of this statute, Section 265 of the Judicial Code prohibiting injunctions against a State court does not apply.

It is also argued that the allegations of the bill do not bring the case within the purview of the statute. I am not impressed by this argument. In the first place, the bill is not a strict bill of interpleader but a bill in the nature of interpleader, and the distinction between the two is that the latter lies when there is shown in addition to multiple vexation some other reason for coming into equity, for example, the administration of a trust.

The law imposes upon the executor an obligation to pay all estate, inheritance and succession taxes due both to the Commonwealth of Massachusetts and to the State of California, and, therefore, as one being under obligations, written or unwritten, to the amount of $500 or more, it may interplead adverse claimants claiming the benefits arising by virtue of such obligation. It has given the bond required

by the statute, and I apprehend no serious difficulty in drawing an order, or decree, which will, when complied with, discharge the complainant and release the bond, and this without unduly interfering with the authorities whose duty it is to determine the extent of the taxes due the respective States. It may be that ultimately the court will not be able to grant all the relief prayed for in the bill of interpleader, but if the court confines its determination to the question of domicile and decrees that the executor shall discharge the tax liability determined by the respective taxing officials in a manner consistent with the decision of this court, relating to the domicile of the testator, it will thereby effectually prevent the unlawful exaction of double tax upon transfers of intangibles and satisfactorily accomplish the purposes of the interpleader. I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. It can only decide whether the decedent was a resident of Massachusetts or of California, if it is determined that he was a resident of California, he then is a non-resident of Massachusetts and vice versa.

It has been argued on behalf of these respondents that it was never intended by Congress that the Interpleader Act should be used to settle controversies such as is here presented. It is quite possible that we have to deal with a factual situation which was not brought to the attention of Congress. No legislation can contemplate every combination of circumstances that may arise to which the principles embodied in it may be applied. Clearly, it was the intention of Congress to afford an opportunity to determine, in one proceeding, conflicting interests in money, property or in benefits accruing from obligations. In my opinion, the plaintiff has brought his case within the fair intendment of the Act.

An injunction may issue restraining, until further order of the court, further action on the part of the respondents relative to the determination, imposition or collection of the inheritance taxes. The complainant may have other equitable relief according to its prayers.

Respondents' motion to dismiss is denied.

RESPONDENTS' ASSIGNMENT OF ERRORS.

[Filed May 20, 1936.]

The respondents, Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, in connection with their petition for appeal, and appearing specially only as stated therein, make the following assignment of errors which they aver occurred in the trial of this case, to wit:

1. The District Court erred in ruling that the present suit comes within the scope of the Federal Interpleader Act.

2. The District Court erred in ruling that the Federal Interpleader Act, construed to include within its scope the present suit, is not invalid to that extent as being in violation of the Eleventh Amendment of the Constitution of the United States.

3. The District Court erred in ruling that the present suit is not a suit in law or in equity commenced or prosecuted against the State of California by a citizen of another State and in violation of the Eleventh Amendment of the Constitution of the United States.

4. The District Court erred in ruling that it had jurisdiction to require that there be tried before and determined by it the alleged controversy as to whether the decedent at the time of his death was domiciled for inheritance tax purposes in the State of California or in the Commonwealth of Massachusetts, notwithstanding the provisions of Article III, §2 of the Constitution of the United States and §233 of the Judicial Code.

5. The District Court erred in ruling that under the California statutes the proceedings to recover the inheritance taxes with respect to the estate of the decedent Robert H. Hunt would probably be brought in the name of the respondent Ray L. Riley, Controller of the State of California.

6. The District Court erred in ruling that it had jurisdiction over these California respondents in the instant cause.

By their Attorneys,

NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER.

On the twentieth day of May, A. D. 1936, a bond on appeal in the sum of two hundred fifty dollars ($250) was filed by the respondents and allowed by the court, the Massachusetts Bonding and Insurance Company acting as surety.

SEVERANCE OF APPEAL BY RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

[Filed May 20, 1936.]

Now comes Henry F. Long, commissioner as aforesaid, and says that he has been asked to join in the appeal by the respondents Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, from the order and decree granting an injunction made and entered in this court on April 28, 1936, against said California respondents and said Long, commissioner, and declines to join therein.

HENRY F. LONG,
Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts.

PAUL A. DEVER, *Attorney General,*
by RAYMOND H. FAVREAU,
Assistant Attorney General.

PRAECIPE.

[Filed May 26, 1936.]

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the First Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to wit:

1. Complaint, including Interpleader Act attached thereto.
2. Bond.
3. Restraining order and order of notice.
4. Special appearance of Ray L. Riley, Controller, Frank P. Sproul,

Inheritance Tax Appraiser, and W. H. H. Gentry, Inheritance Tax Attorney, of the State of California.

5. Motion to dismiss.

6. Motion to vacate restraining order.

7. General appearance and answer of Henry F. Long, commissioner.

8. Plaintiff's motion for temporary injunction.

9. Opinion.

10. Decree denying motion to dismiss.

11. Order of injunction.

12. Motion for stay of proceedings pending appeal.

13. Necessary appeal papers.

14. Waiver of appeal by Henry F. Long, commissioner.

NORMAN W. BINGHAM, JR.,
G. S. F.
GEORGE S. FULLER,
Attorneys for the Appellants.

Assented to:

MERRILL S. JUNE,
BRADLEY B. GILMAN,
Attorneys for Worcester County Trust Company, Executor u/w Robert H. Hunt.

A citation on appeal was issued on May 20, 1936, being made returnable in the United States Circuit Court of Appeals for the First Circuit on June 19, 1936, service being acknowledged thereon by the attorneys for the Worcester County Trust Company, executor.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
DISTRICT OF MASSACHUSETTS, ss.

I, James S. Allen, clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the foregoing is the transcript of the record on the appeal of Ray L. Riley, Controller of the State of California, Frank P. Sproul, Inheritance

Tax Appraiser of the State of California, and W. H. H. Gentry, Inheritance Tax Attorney of the State of California, three of the defendants, including true copies of such proofs, entries and papers on file as have been designated by praecipe, in the cause entitled,

No. 4292, EQUITY DOCKET,

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR U/W ROBERT H. HUNT, PETITIONER,

v.

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS ET AL., RESPONDENTS,

now pending in said District Court.

And I further certify that transmitted herewith are the originals of the petition for appeal, the bond on appeal and the citation on appeal with the acknowledgment of service thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at Boston, in said District, this twenty-fifth day of June, A. D. 1936.

[SEAL] JAMES S. ALLEN, *Clerk.*

[MEMORANDUM. An order of enlargement of time for docketing case to, and including, June 29, 1936, is here omitted. A. I. CHARRON, *Clerk.*]

On October 19, 1936, a certified copy of an order of the United States Supreme Court denying a petition for a writ of certiorari was filed.

On January 6 and 7, 1937, this cause came on to be heard and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on March 15, 1937, the following Opinion of the Court and Dissenting Opinion were filed:

OPINION OF THE COURT.

March 15, 1937.

BINGHAM, J. This is an appeal from a decree of the District Court for Massachusetts granting an interlocutory injunction on a bill of complaint in the nature of a bill of interpleader brought by the executor of the Will of Robert H. Hunt under the provisions of Judicial Code, Section 24, as amended by the Act of January 20, 1936 (c. 13, s. 1, 49 Stat. 1096; U. S. C. Title 28, s. 41), which will be found in the footnote.

NOTE. "An Act to amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader——Twenty-Sixth.——(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment of the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable

The complainant, the Massachusetts executor, is a citizen of

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to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one other.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts where in said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code.

"Sec. 2. The Act entitled 'An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader', approved May 8, 1926 (U. S. C. Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby."

"Approved, January 20, 1936."

Massachusetts. The respondent, Henry F. Long, is the Commissioner of Corporations and Taxation of Massachusetts and a citizen of that State. The other respondents are Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, and Frank P. Sproul, Inheritance Tax Appraiser of that State, all citizens of California.

In the bill it is alleged that on June 26, 1935, the will of Robert H. Hunt was admitted to probate in Massachusetts; that the complainant was appointed executor under the will; that Mr. Hunt died on June 11, 1935, possessing at the time of his death certain real estate and a sizeable bank deposit in the State of California, and a like bank deposit in Massachusetts and considerable intangible property, the bulk of which was in the custody and possession of the complainant in Massachusetts; that on July 29, 1935, the Security-First National Bank of Los Angeles, California, was appointed administrator with the will annexed of the estate of Mr. Hunt by the Superior Court of California, in ancillary proceedings; that the complainant, as executor, had in its possession money and property of an amount and value exceeding $500, on which the taxing officials of the two States claim the right adversely to each other to assess a tax; that under the applicable statutes of Massachusetts (General Laws, c. 65, ss. 1, 6 as amended, c. 65A and c. 480 of the Acts of 1935) and California (s. 2, 821 of the Laws of 1921 as amended, and s. 3, c. 358 of the Laws of 1935) complainant is also under obligation to pay any and all estate, inheritance and succession taxes to said tax officials of the States of Massachusetts and California, respondents herein, irrespective of any demand made therefor, and that said respondent tax officials of both States are claiming to be entitled to the benefits thereof; that, under the provisions of said tax statutes of each State a tax lien is imposed on all property of the estate of Hunt unless all taxes assessed by said tax officials are paid, and the respondents claim to be entitled to the benefits of such liens.

In paragraphs 8, 9, 10 and 12 of the bill it is alleged:

"8. Your complainant is informed and believes and therefore alleges that the respondent Henry F. Long, commissioner as aforesaid, *has determined* that the said Robert H. Hunt *died domiciled in Mass-*

achusetts, and is asserting and has threatened and is *about to assess and attempt to collect* from your complainant and the Estate in its charge, estate and succession taxes under the provisions of said Massachusetts tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in Massachusetts the estate and succession taxes under said provisions of Massachusetts tax statutes would be a comparatively nominal amount.

"9. Your complainant is informed and believes and therefore alleges that the respondents, Ray L Riley, comptroller as aforesaid, W. H. H. Gentry, inheritance tax attorney as aforesaid, and Frank P. Sproul, inheritance tax appraiser, as aforesaid, have each severally or as agent one for another, individually or by their agent or agents, *determined* that the said Robert H. Hunt died *domiciled in California* and are asserting and have threatened and are *about to assess and attempt to collect* from your complainant and the Estate in its charge, estate, inheritance and succession taxes under the provisions of said California tax statutes, based upon said domicile or determination of domicile and in an amount in excess of one hundred thousand (100,000) dollars; and that if the said Robert H. Hunt had deceased a non-resident of and not domiciled in California the estate, inheritance and succession taxes under said provisions of California tax statutes would be a comparatively nominal amount.

"10. That it is impossible in law or fact for the said Robert H. Hunt to have been domiciled at his death in both Massachusetts and California and it should not be possible for estate, inheritance and succession taxes to be so asserted, threatened, assessed and collected by the tax officials or representatives of said two States."

"12. That therefore the threatened collection of both the California and Massachusetts taxes, each based upon an *inconsistent claim of domicile,* will deprive your complainant and the Estate in its charge of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; that the threatened assessment and collection of both of said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in California and Massachusetts, causing extra expense, preventing distribution, compelling your complainant to maintain large cash reserves at low interest rates or at no interest to cover the threatened taxes and costs of litigation." (Italics supplied.)

It was further alleged that the main controversy related to a sum of $100,000 or more in the custody or possession of complainant and its obligation with respect thereto under said tax laws; that complainant had no adequate remedy at law; and that it had given bond payable to the clerk of court in such amount and with such sureties as the court had deemed proper, conditioned upon compliance with further orders or decrees of the District Court with respect to the subject-matter of the controversy.

The prayers were (1) for a temporary injunction restraining the respondents, their agents and servants, until further order of the court, from taking any further action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any such taxes "from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or your complainant"; (2) that the court determine the domicile of said Robert H. Hunt at the date of his death and then permanently enjoin those respondents who are officials of the non-domiciliary state from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined; (3) that each of the respondents be required to set forth and plead their several adverse claims to the property in the custody and possession of complainant, and to any of the benefits due to the complainant's obligation to pay estate, inheritance and succession taxes; (4) that the court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's obligation; (5) that the court determine the sum owed to any one or more of the respondents by complainant; (6) that the court adjudge that complainant is under no further obligation to any one or more of the respondents upon compliance with such decree as this court may make in this case.

The order of injunction here appealed from, after reciting the nature of the complaint, that a hearing had been had upon the California respondent's motion to dismiss the same as to them for want of jurisdiction and to vacate a temporary restraining order thereto-

fore granted, and that it appeared there was danger of irreparable injury, reads:

"Ordered that the respondents, Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California, Frank P. Sproul, Inheritance Tax Appraiser of the State of California, and each of them, their agents, and servants, be, and they are hereby, enjoined until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of said Robert H. Hunt, and from taking any action to collect any estate, inheritance or succession tax from the Estate of Robert H. Hunt, the Security-First National Bank of Los Angeles as administrator with the will annexed of the Estate of Robert H. Hunt, or the complainant."

In their assignments of error the appellants, the officials of California, complain that the court erred (1) in ruling that the present suit comes within the scope of the Federal Interpleader Act; (2) in ruling that the Federal Interpleader Act, construed to include within its scope the present suit, is not invalid to that extent as being in violation of the Eleventh Amendment of the Constitution of the United States; (3) in ruling that the present suit is not a suit in law or in equity commenced or prosecuted against the State of California by a citizen of another state and in violation of the Eleventh Amendment; (4) in ruling that it had jurisdiction to require that there be tried before and determined by it the alleged controversy as to whether the decedent at the time of his death was domiciled for inheritance tax purposes in the State of California or in the Commonwealth of Massachusetts, notwithstanding the provisions of Article III, § 2, of the Constitution of the United States and § 233 of the Judicial Code; (5) in ruling that under the California statutes the proceeding to recover the inheritance taxes with respect to the estate of the decedent Robert H. Hunt would probably be brought in the name of the respondent Ray L. Riley, Controller of the State of California; and (6) in ruling it had jurisdiction over these California respondents in the instant case.

It is apparent from a reading of the Interpleader Statute that the

original jurisdiction conferred upon the district courts relative to bills of interpleader and bills in the nature of interpleader, and authorizing such suits to be brought by any person having the custody or possession of money or property of the value of $500 or more, or being under any obligation, written or unwritten, to the amount of $500 or more, is conditioned upon there being two or more parties, citizens of different states, claiming adversely to one another, to be entitled to money or property of the value of $500 or more in the complainant's hands, or claiming the benefits arising by virtue of any obligation in the amount of $500 or more, to which the complainant is subject; that the parties sought to be impleaded must have a claim adverse to one another and that the district court shall have before it as respondents the real parties in interest, so that, having determined the liability of the complainant to one of the impleaded claimants, it can, upon satisfaction of that liability, discharge him from further liability to both adverse claimants. And it is apparent that, unless these conditions exist, it was not the intention of Congress that the provisions of the Interpleader Act could be availed of.

It is also certain that by the complainant's bill it is alleged that the complainant has in his hands, as executor of the estate of Mr. Hunt, money or property of the amount and value of more than $500 and is also under an obligation to one or the other of the claimants in excess of that amount. But whether the bill of complaint meets other conditions of the Interpleader Act, namely, whether the respondents, the officials of the States of California and Massachusetts, are properly interpleaded, depends largely, if not wholly, upon a construction of the allegations of the complaint, disclosing whether they are sued individually and as citizens of different states, or whether they are sued as representatives and agents of the States of California and Massachusetts. If they are sued as agents and representatives of the respective states, then the states themselves have been interpleaded, (*Missouri* v. *Fiske,* 290 U. S. 18, 25, 26, 28; *In re Ayers,* 123 U. S. 443, 505, 506; *Missouri, etc., Ry. Co.* v. *Missouri Railroad,* 183 U. S. 53, 58, 59; *Ex Parte State of New York, No. 1,* 256 U. S. 490; *Sterling* v. *Constantin,* 287 U. S. 378, 393, and cases cited) and as the states are not citizens of the United States the complaint can not be main-

tained under the Interpleader Act, for under that Act only citizens of different states can be interpleaded. A state is not a citizen of the United States. *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 63; *Postal Tel. Cable Co.* v. *Alabama*, 155 U. S. 482, 487.

It is clear, therefore, that the Interpleader Act does not contemplate the impleading of states as adverse claimants, but only citizens of different states, and, if it did, Congress would have acted in excess of its authority under the Constitution (Article XI) in attempting to confer such power upon the district courts, for original jurisdiction of suits between states is conferred upon the Supreme Court. Art. III, Sec. 2, clause 2 of the Constitution. Furthermore, the Eleventh Amendment prohibits the courts of the United States from entertaining a suit against a state by a citizen of another state.

While the judicial power of the United States extends to controversies between two or more states and to suits brought by a state against citizens of another state (Art. III, Sec. 2, clause 1), it does not extend to a suit brought against a state by citizens of another state. Eleventh Amendment. And because of its sovereignty no suit can be maintained against a state, without its consent, by one of its own citizens. *Monaco* v. *Mississippi*, 299 U. S. 313, 324.

In *Ex Parte State of New York, No. 1*, 256 U. S. 490, at 497, the court said:

"That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given: not one brought by citizens of another State, or by citizens or subjects of a foreign state, because of the Eleventh Amendment; and not even one brought by its own citizens, because of the fundamental rule of which the Amendment is but an exemplification. *Beers* v. *Arkansas*, 20 How. 527, 529; *Railroad Co.* v. *Tennessee*, 101 U. S. 337, 339; *Hans* v. *Louisiana*, 134 U. S. 1, 10–17; *North Carolina* v. *Temple*, 134 U. S. 22, 30; *Fitts* v. *McGhee*, 172 U. S. 516, 524; *Palmer* v. *Ohio*, 248 U. S. 32, 34; *Duhne* v. *New Jersey*, 251 U. S. 311, 313."

And in the same case at page 500:

"It is now established that the question [what is to be deemed a suit against a state] is to be determined not by the mere names of the titular parties but by the essential nature and effect of the proceeding, as it appears from the entire record. *Louisiana* v. *Jumel,* 107 U. S. 711, 719, 720, 723, 727–728; *Hagood* v. *Southern,* 117 U. S. 52, 67, *et seq.; In re Ayers,* 123 U. S. 443, 487–492; *Pennoyer* v. *McConnaughy,* 140 U. S. 1, 10, *et seq.; Smith* v. *Reeves,* 178 U. S. 436, 438–440; *Murray* v. *Wilson Distilling Co.,* 213 U. S. 151, 168–170; *Lankford* v. *Platte Iron Works Co.,* 235 U. S. 461, 469."

It is therefore necessary to ascertain by a construction of the allegations of the complaint whether the tax officials of the two states are sued or can be treated as being sued as individuals or only as representatives and agents of the states.

According to the allegations of the complaint Mr. Long, as tax official of Massachusetts, has determined that Mr. Hunt died domiciled in that State and has threatened and is about to assess and collect of the complainant, and the estate in its charge, inheritance and succession taxes imposed under the provisions of the Massachusetts tax statutes upon the transmission of the personal property of the estate, tangible or intangible, within the jurisdiction of the State, based upon the determination of domicile and consequent situs of the intangible property in that State; and that the respondents, officials of California, have determined that Mr. Hunt died domiciled in California and are threatening and about to assess and collect from the complainant and the estate in its charge similar taxes (based on domicile and situs of the intangible property of the estate within the jurisdiction of that State) imposed under the provisions of the California tax statutes.

It is to be noted that it is not alleged that the tax statutes under which the respondent-officials of the two States are acting are unconstitutional or that they do not authorize the assessment and collection of such taxes against the complainant or the estate in its hands, if Hunt died domiciled in either State. It therefore cannot be said that the respondent-officials of either Massachusetts or California are acting under unconstitutional and void tax laws, in which case they would be acting unlawfully and as individuals, not as officials and

agents of the respective States. And the complainant in its brief concedes this. It there states: "The bill nowhere alleges that a statute of either State is unconstitutional and no such claim is made."

It is also to be noted that neither one nor both of the respondents, as tax officials of the respective States, are charged with acting in violation of the laws of their respective States and to have determined the question of domicile arbitrarily and without substantial evidence to support such determination. See *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158, 160, and cases there cited in the foot note; *Beidler* v. *So. Car. Tax Commission,* 282 U. S. 1, 8, 9. If there was such an allegation with respect to the determination of domicile by both sets of officials, they could be regarded as sued as individuals, for the acts which they would be charged with having done would be in violation of law, unless it could be said from a consideration of the complaint as a whole that the *relief sought* was against the States and not the officials personally. But by the bill the officials of neither State are charged with having acted, in determining the question of domicile, arbitrarily and without evidence to support their conclusions and in violation of law.

In the absence of such allegations in the complaint it must be regarded, in the respects above alluded to, as being an attempt to implead the States of California and Massachusetts as adverse claimants, which neither the Interpleader Act nor the Constitution permits. On the other hand to bring the bill within the provisions of the Interpleader Act and have the officials interpleaded regarded as citizens of different states, it was essential for the complainant to charge in the bill that the determination of domicile in each state was without adequate evidence and in violation of law, for, if only one set of officials was so charged, then the complainant would be impleading one set of officials as individuals and the other set as agents and representatives of a state, which would be impleading individual citizens against a state, would not meet the requirements of the Interpleader Act, and would be in violation of the Eleventh Amendment.

But notwithstanding what has been said, the complainant contends that Mr. Hunt could not have had his domicile at the time of his death both in California and Massachusetts and that "the threat-

ened collection of both the California and Massachusetts taxes, each based on an inconsistent claim of domicile, will deprive your complainant of property without due process of law and deny it equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States."

It is true that if the threatened taxes were later assessed and collected in each State, based upon a determination of domicile in each, the complainant and the estate in its hands would be subjected to the payment of two taxes. But if the officials of the respective States, in making their determination and assessment, were acting under constitutional laws of sovereign states and in compliance with them—not in violation of them—it is difficult to see how the complainant, or the estate in its hands, would be deprived of property without due process of law or be deprived of the equal protection of the law, in violation of the Fourteenth Amendment. And in this case, the tax laws of the respective States being conceded to be constitutional and there being no allegations that the officials of either State acted in violation of the laws of their respective States (*Johnson Oil Co.* v. *Oklahoma*, 290 U. S. 158, 160), it must be assumed that, in determining the question of domicile, each set of tax officials acted in conformity to law and had before it adequate evidence to support the conclusion reached. It is entirely conceivable that each set of officials could have found that the domicile of the decedent was in its State and that neither acted in violation of law; and if they did not act in violation of law, the taxes assessed and collected on such determinations would not contravene the Fourteenth Amendment. In reaching the conclusion they did on the evidence one or the other may have erred in judgment, but such error would not be a lack of due process or in violation of the equal protection clause. It has been settled that that Amendment does not assure immunity from judicial error or uniformity of judicial decisions. *Milwaukee Electric Ry. & Lt. Co.* v. *Wisconsin*, 252 U. S. 100, 106; *Central Land Co.* v. *Laidley*, 159 U. S. 103; *Tracy* v. *Ginzberg*, 205 U. S. 170.

In the *Wisconsin case, supra*, it was said:

"The Fourteenth Amendment does not, in guaranteeing equal protection of the laws, assure uniformity of judicial decisions . . . any

more than, in guaranteeing due process, it assures immunity from judicial error."

The question of a double tax based on inconsistent determinations of domicile was before the Supreme Court on a petition for certiorari to the New Jersey Court of Errors and Appeals in the case of *Dorrance et al.* v. *Martin,* 298 U. S. 678, where that court declined to take the case on certiorari. There the tax officials of New Jersey, the Prerogative Court of that State (115 N. J. Eq. 268; 170 Atl. 601; 116 N. J. Eq. 204; 172 Atl. 503), the Supreme Court of New Jersey (13 N. J. Misc. 168; 176 Atl. 102), and its Court of Errors and Appeals (116 N. J. Law 362; 184 Atl. 743), on the one hand, had determined that the domicile of Mr. Dorrance, at the time of his death, was in New Jersey and imposed an inheritance or succession tax on his estate, including therein the intangible property; and, on the other hand, the tax officials of Pennsylvania and the courts of that State, including its Supreme Court (309 Pa. 115), had determined that his domicile was in Pennsylvania, and, having so determined and entered judgment accordingly, the State collected a tax on the devolution of his estate, including the intangible property, on the ground that its situs was in Pennsylvania, where its courts had decided his domicile was.

In the New Jersey proceeding all the evidence introduced in the Pennsylvania proceeding, including the judgment of the Supreme Court of Pennsylvania, was introduced before the tax officials of New Jersey, who found the decedent domiciled in New Jersey. An Appeal was taken to the Prerogative Court. In the Prerogative Court the judgment of the Supreme Court of Pennsylvania was excluded from consideration on the ground that it was not conclusive evidence upon the question of domicile and, not being conclusive, was not competent evidence. The Prerogative Court having affirmed the decision of the tax officials, the case was taken to the Supreme Court of New Jersey, where the appellants complained (1) that the Prerogative Court failed to give full faith and credit to the judgment of the Supreme Court of Pennsylvania; (2) that the imposition of a tax by New Jersey, based on a domicile there, would result in the payment of two taxes on the devolution of the same estate, Pennsylvania having de-

termined the decedent's domicile to have been in Pennsylvania and having assessed and collected inheritance taxes accordingly, and that this would be in violation of the due process and the equal protection clauses of the Fourteenth Amendment; and (3) that the tax officials of New Jersey acted in violation of law in determining that Mr. Dorrance was domiciled in New Jersey. On appeal to the Court of Errors and Appeals the same questions were raised and that court sustained the judgment of the Supreme Court affirming the judgment of the Prerogative Court.

The executors then petitioned the Supreme Court of the United States for certiorari, assigning as error (1) the failure of the courts of New Jersey to give full faith and credit to the judgment of the Pennsylvania Court; (2) that as the tax judgment of the Court of Errors and Appeals affirming the judgments of the lower courts was based on a domicile of Mr. Dorrance in New Jersey, if held valid and paid (the petitioning executors having already paid a tax based on domicile in Pennsylvania), would deprive them of their property in contravention of the due process and equal protection clauses of the Fourteenth Amendment; and (3) that the state officials and courts of New Jersey acted in violation of law in determining the domicile of Mr. Dorrance to be in that state.

In its denial of certiorari, the constitutional question—that the New Jersey courts had failed to give full faith and credit to the Pennsylvania judgment—was undoubtedly regarded by the Supreme Court as unsubstantial, that question having been previously decided many times by that court. *Overby* v. *Gordon,* 177 U. S. 214, 227; *Tilt* v. *Kelsey,* 207 U. S. 43, 53, 59; *Thormann* v. *Frame,* 176 U. S. 350, 355, 356. It is also certain that the evidence presented in the New Jersey courts was adequate to sustain their finding of domicile in New Jersey, and consequently that the tax officials and courts of New Jersey did not act in violation of law for want of adequate evidence to support the finding of domicile there. And in denying certiorari the Supreme Court must also have concluded that the mere fact that the respective tax officials and courts of the two States had determined that the domicile of Dorrance, at the time of his death, was in their respective States, and that such determinations, assess-

ments, and collection of the two taxes, based on inconsistent determinations, was not in violation of the due process and equal protection clauses of the Fourteenth Amendment. It is inconceivable that they would have denied certiorari if they had regarded the mere determination of inconsistent domiciles in the two States a violation of the Fourteenth Amendment. The evidence introduced and considered in the proceedings in both States was conflicting and the error, if any, was a judicial one.

We recognize that the mere denial of a petition for certiorari by the Supreme Court cannot be regarded by us as determinative of the questions therein raised; but in view of the action of the Supreme Court in that case and what has been above said bearing upon the questions there involved, we think that the allegations in the complaint of mere inconsistent determinations of domicile resulting in two taxes by sovereign states are not allegations of a violation of the Fourteenth Amendment; and there being no claim that the laws under which the tax officials acted were unconstitutional and no allegations in the bill that, in determining the question of domicile, they acted without adequate proof and in violation of law, the bill does not state a cause of action against the officials as individuals, but as representatives and agents of their respective states and can not be maintained.

If the bill could be regarded as brought against the tax officials as individuals and not as representatives and agents of their states on the ground that both sets of officials acted arbitrarily and without adequate evidence in determining domicile, we are further of the opinion that the officials of California, as individuals, cannot be regarded as having adverse claims or demands against the officials of Massachusetts, as individuals, or vice versa; and that the claimants here sought to be impleaded are the States of California and Massachusetts for taxes due them, not the officials personally.

Then again, the Interpleader Act contemplates that the District Court, having determined a controversy between the adverse claimants and in favor of one of them, may order the complainant to pay to the successful party the amount of his claim and, payment having been made, enter a decree of acquittance discharging the complainant from the claim of the defeated party, as well as that of the successful

one. If in this case the District Court should find that Mr. Hunt, at the time of his death, was domiciled in Massachusetts and not in California, and if the officials of California, as individuals and not as representatives and agents of California, were the only parties before the court, it would have no authority or jurisdiction over the State of California entitling it to discharge its tax claim against the complainant as executor of Mr. Hunt's estate. The interest of the State in the tax is of such a nature that a final decree cannot be made without affecting that interest. And inasmuch as the Interpleader Act (Sec. 26 (d)) and the complaint contemplate a discharge of the complainant from liability to both impleaded parties, which cannot be done unless the real claimants, the States, are before the court as such or by their duly authorized agents and representatives, this proceeding, if the impleaded respondents are both sued as individuals, is not authorized by that Act, and the District Court would be without jurisdiction. *Cunningham* v. *Macon & Brunswick Co.*, 109 U. S. 446, 451, 456, 457; *Missouri* v. *Fiske*, 290 U. S. 18, at page 28.

The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction.

MORTON, J. (dissenting). I agree that the Interpleader Act as amended is broad enough to cover the present case of conflicting claims to an estate tax which can be justly collected by only one of the claimants. But I do not think, as my brethren hold, "that the claimants here sought to be impleaded are the *States* of California and Massachusetts for taxes due them, not the officials 'personally'", and that the act is on that ground unavailable. While the bill might be more clearly and definitely phrased, I understand it to allege that the tax officials of both California and Massachusetts are claiming an estate tax on the estate of decedent Hunt; that only one such tax can legally be collected, and that plaintiffs are ready to pay it; and that the claim made by each State official is wholly unwarranted in law, is without legal justification under any statute, and violates the XIV amendment. It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or

the other of the claimants, but denies indebtedness or obligation to each one separately.

I take it as settled by *First National Bank* v. *Maine* (284 U. S. 312) that no state may impose an estate tax on the estate of a decedent unless he was domiciled within its borders. To do so is unconstitutional. Plainly, if Hunt was domiciled in Massachusetts, then California tax officials are acting not only illegally, but unconstitutionally, in undertaking to tax his estate,—and vice versa. I also take it to be settled that a state official, who takes, or threatens to take, action which is unconstitutional or without any warrant in law, may be enjoined. He is not the State for the purpose of such illegal action. *Sterling* v. *Constantin,* 287 U. S. 378, 393. In *Greene et al., Board of Valuation and Assessment of the State of Kentucky* v. *Louisville, etc., Railroad Company,* 244 U. S. 499, the plaintiffs were, as the title of the case indicates, the Taxation Board of the State of Kentucky, but they were held liable to suit, and it was said that the liability to suit of such officials was not confined to cases where they were attempting to enforce an unconstitutional statute. "A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual." *Reagan* v. *Farmers' Loan & Trust Co.,* 154 U. S. 362, 390. See too *Terrace* v. *Thompson,* 263 U. S. 197.

A state official who is acting illegally and without jurisdiction, as both these tax officials are alleged to be acting and one of them concededly is acting, cannot successfully maintain that the Eleventh Amendment bars any suit against him. As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; as to the other, it will appear that he is acting unconstitutionally and illegally. As I have said such a result is inherent in suits in the nature of interpleader, that one claimant is adjudged to have a good claim against the plaintiff, and the other not. Jurisdiction depends on the allegations of the bill against each claimant.

It has been said on the highest authority that, "Taxation is an intensely practical matter and laws in respect of it should be construed

and applied with a view of avoiding, so far as possible, unjust and oppressive consequences." McReynolds, J., *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, 212. Considering the recognized defect in our system of taxation which this statute is designed to cure, the example of shocking injustice to which it has led in the *Dorrance case* (116 N. J. Law 362; 309 Pa. 115; 298 U. S. 678), which is a reproach to our law, and the constant threat of similar injustice in all cases in which there is a dispute as to domicile, I think this statute should receive a liberal interpretation, and that on points which are at best rather technical and procedural in character, doubt should be resolved in favor of jurisdiction under this statute, which appears to be the only practicable method of remedying the evil. (See 45 Yale Law Journal 1173, discussion of this statute by Prof. Chaffee, and 49 Harvard Law Review 1378, a note of this statute in tax cases.) One of the claimants, Mr. Long, Tax Commissioner of Massachusetts, regards the considerations just mentioned as so weighty that he makes no objection on jurisdictional grounds and approves the practice of submitting such cases of disputed domicile to the impartial determination of the federal courts. Various technical objections made by the appellant seem to me to have been fully and correctly dealt with by Judge Brewster in the District Court, whose opinion it is unnecessary to restate. I think the judgment appealed from should be affirmed.

On the same day, to wit, March 15, 1937, the following Final Decree was entered:

FINAL DECREE.

March 15, 1937.

This cause came on to be heard on January 6 and 7, 1937, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now, to wit, March 15, 1937, here ordered, adjudged and decreed as follows: The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit on April 2, 1937, the following Motion was filed:

MOTION FOR RESTORATION AS PARTY RESPONDENT.

[Filed April 2, 1937.]

Now comes Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts and says that he was a party respondent in this case in the District Court and is vitally interested in its outcome; that he declined to join in the appeal from the April 28, 1936, order of the District Court, being satisfied to submit to the jurisdiction of that court; that this court on March 15, 1937, decided that the District Court had no jurisdiction of the case; that he is informed and believes that a petition for certiorari upon this decision will be filed in the United States Supreme Court by the Worcester County Trust Company, Executor, complainant; that he desires to participate of right in any such proceedings in the United States Supreme Court.

Wherefore, he moves that he be restored as a party respondent in this case and be made a party of record in this court.

HENRY F. LONG, *Commissioner,*
by PAUL A. DEVER,
Attorney General of Massachusetts.

Worcester County Trust Company, Executor, has no objection to the allowance of this motion.

BRADLEY B. GILMAN,
its Attorney.

Thereafter, to wit, on April 5, 1937, the following Order of Court was entered:

ORDER OF COURT.

April 5, 1937.

The application of Henry F. Long, Commissioner of Corporations and Taxation, filed April 2, 1937, in this case, is denied, without prejudice to renew his application in the Supreme Court of the United States if such court takes the case on certiorari.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on April 9, 1937, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 61, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including April 14, 1937, in the cause in said court numbered and entitled,

No. 3163.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., RESPONDENTS, APPELLANTS,

v.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR, PETITIONER, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this fourteenth day of April, A. D. 1937.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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50 Harvard Law Review 956, 960 10

11 Temple Law Quarterly 103 10

In the Supreme Court of the United States

OCTOBER TERM, 1936

No.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA

W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA

and

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOT THE FIRST CIRCUIT

The Worcester County Trust Company, Executor u/will of Robert H. Hunt, prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the First Circuit in the above case rendered March 15, 1937, reversing the decision of the United States District Court for the District of Massachusetts (R. 26), reported in 14 F. Supp. 754. The opinions of the Circuit Court (R. 43, 57) are not yet officially reported.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by

STATEMENT

Robert H. Hunt died on June 11, 1935. By his will the petitioner, formerly called Worcester Bank & Trust Company, was named executor; it duly qualified and was appointed executor by the Worcester County Probate Court on June 26, 1935, the date of the allowance of the will in Massachusetts. The deceased left real estate and bank deposits in California and bank deposits and considerable other intangible property in Massachusetts, the bulk of which is in the custody of the petitioner executor (R. 3). Said executor thereafter procured ancillary probate to be taken out in California (R. 3).

The tax officials of each State are seeking the benefit of the petitioner's fiduciary obligations as executor to settle all inheritance taxes. The Tax Commissioner of Massachusetts asserts a succession tax due that State based on his claim of domicile in Massachusetts. The tax officials of California assert an inheritance tax due that State based on their claim of domicile in California.

The petitioner executor, by reason of such conflicting and inconsistent claims, filed a bill in the nature of interpleader (R. 2) in the District Court for the District of Massachusetts and secured an order (by Sweeney, J.) (R. 12) restraining the tax officials of both States from taking steps to assess, determine or collect inheritance taxes due from the Hunt Estate. The bill prayed particularly for a determination of the domicile of the decedent in order to

ascertain which tax officials are proceeding illegally (R. 6).

The Tax Commissioner of Massachusetts entered his general appearance and answered that Hunt died domiciled in Massachusetts (R. 20). The tax officials of California appeared specially, objecting to the jurisdiction of the District Court, and moved to vacate the restraining order and to dismiss the bill of complaint on the ground that it constituted a suit against a sovereign State and was therefore prohibited by the Eleventh Amendment to the United States Constitution. They did not deny that the California probate court proceedings are ancillary or of a non-resident estate. The record indicates no claim as yet advanced to or pending in any California court that Robert H. Hunt died domiciled in that State. The motion to dismiss was denied after hearing and an injunction issued on April 28, 1936 (R. 24). The opinion of the District Court (by Brewster, J.) was entered April 27, 1936, upholding the jurisdiction of that Court (R. 26).[1]

The Tax Commissioner of Massachusetts declined to join in the appeal taken by the tax officials of California to the Circuit Court of Appeals for the

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[1]If Section 266 of the Judicial Code required a three-judge court, the Circuit Court of Appeals erred in entertaining the appeal and this Court should reverse the decision below with directions to remand to the District Court. *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10. But see Section 24—Twenty-sixth (c) of the Judicial Code as amended January 20, 1936, *infra* p. 5, 6, and R. p. 7.

First Circuit. The record discloses that he was not made an appellee (R. 39). Prior to argument the California tax officials petitioned this Court for a writ of certiorari to review the decision of the District Court. The Tax Commissioner of Massachusetts filed a Brief Amicus Curiae. On October 12, 1936, the petition was denied. *Ray L. Riley et al.* v. *Worcester County Trust Co.*, 299 U. S. , 57 S. Ct. 29. The case proceeded to argument before the Circuit Court of Appeals which by opinion dated March 15, 1937 (by Bingham, C. J., Wilson, J. concurring) reversed the District Court with directions that "The order of the District Court granting a temporary injunction is vacated and the case is remanded to that Court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 59). Judge Morton dissented (R. 57). On April 2, 1937 the Tax Commissioner of Massachusetts filed in the Circuit Court an application to be restored as a party respondent which was on April 5, 1937 denied by the following order: "The application of Henry F. Long, Commissioner of Corporations and Taxation, filed April 2, 1937, in this case, is denied, without prejudice to renew his application in the Supreme Court of the United States if such Court takes the case on certiorari" (R. 60).

QUESTIONS PRESENTED

1. Whether, where the tax officials of California and Massachusetts each claim that a decedent died

domiciled in their State and each claim and threaten to collect state inheritance taxes on a resident basis, the Federal District Court of Massachusetts was given jurisdiction by Section 24 of the Judicial Code as amended January 20, 1936, upon petition by the executor, prior to institution of tax determinative proceedings in their respective state courts, to enjoin such officials from attempting the collection of both taxes until the issue of domicile is decided by that Court.

2. Whether the threatened collection of both such State taxes involves a violation of the Fourteenth Amendment.

3. Whether if such jurisdiction was so given by said statute, the suit is against a State in violation of the Eleventh Amendment.

STATUTE INVOLVED

Section 24 of the Judicial Code, as amended by the Act of January 20, 1936, provides in part:

> The district courts shall have original jurisdiction as follows:
>
> *****
>
> Twenty-sixth. —(a) Of suits in equity begun by bills of interpleader or bills in the nature of interpleader duly verified, filed by any person *** being under any obligation written or unwritten to the amount of $500 or more, if—
>
> (i) Two or more adverse claimants, citizens of different States, are claiming to be entitled

*** to any one or more of the benefits arising *** by virtue of any such obligation; and

(ii) The complainant *** (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

*****

(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State Court or in any United States court on account of such *** obligation until the further order of the court;

*****

The statute is printed in full at pages 7–9 of the Record.

SPECIFICATION OF ERRORS

The court below erred—

1. In construing the allegations of the complaint as treating the respondent tax officials solely as agents of the States rather than as individuals.

2. In regarding the complaint as an attempt to implead the States of California and Massachusetts as adverse claimants.

3. In ruling that assessment and collection of inheritance taxes by both sets of tax officials acting in accordance with the laws of their respective States, but based on inconsistent findings as to the decedent's domicile, would not deprive the complainant of property without due process of law.

4. In ruling that by denial of certiorari in *Dorrance et al.* v. *Martin*, 298 U. S. 678, this Court "must have concluded" that collection of two inheritance taxes based on inconsistent determinations of domicile "was not in violation of the due process and equal protection clauses of the Fourteenth Amendment."

5. In ruling that the respondents, even if regarded as individuals, are required to have adverse claims.

6. In ruling that the District Court could not issue a final decree without affecting the interest of the State of California.

7. In ruling that the proceeding in the District Court was not authorized by the Interpleader Act of January 20, 1936.

8. In ruling that the District Court had no jurisdiction to entertain the complaint.

9. In remanding the case to the District Court with directions to dismiss the bill for want of jurisdiction.

REASONS FOR GRANTING THE WRIT

I

Error was committed by the court below in deciding questions of federal law which are of such great importance in the administration of inheritance taxation throughout the country that they should be settled by this Court. The recent litigation involving the Dorrance Estate and the current proceedings in this Court (Original No.) concerning the estate of Edward H. R. Green, late of New York, Texas, Massachusetts or Florida have served to focus attention upon the dilemma facing the personal representatives of a decedent whose domicile may be in any one of two or three or four states. The injustice of the imposition of inheritance taxes upon the entire estate by two or more state tax officials, each *often as uncertain of the domicile as the executor* but each relying on a claim of domicile inconsistent with the other, is generally conceded. The widespread concern of state tax officials is clearly presented in the report of a committee of the National Tax Association quoted in part in Appendix B, *infra*, p. 18. Executors throughout the country are increasingly often facing the problem of duplicate inheritance taxation. A typical case is pending in the United States District Court for the District of New Jersey, Equity No. 4805, *Nevin, Executor et al* v. *Martin, Tax Commissioner of New Jersey et al.*, where after collection of an inheritance tax by Pennsylvania, injunctive relief is sought against duplicate taxation

of the estate by the New Jersey officials. The California tax officials (respondents herein) recognized the public importance of this problem in their petition for certiorari heretofore filed in this Court in this case as No. 215, October Term, 1936. See 299 U. S. 57 S. Ct. 29. We have reprinted a pertinent portion of their petition and brief in support of that petition in Appendix A, *infra*. p. 16.

A probable solution to this problem is presented in the instant case. The January 20, 1936 Act made extensive amendments to the so-called Federal Interpleader Act and the Act as so amended provides an apt means of bringing before an impartial Federal forum the officials of the various States, so that the basic question of domicile may be determined. This statute as so amended has yet to be presented to this Court for construction. As presented in the instant case the question of construction is inextricably entwined with the question of the construction of the Eleventh Amendment to the United States Constitution. The majority opinion below was that the suit was against the sovereign States in violation of that Amendment and that there were no individual adverse claimants to be interpleaded under the statute. It denied, moreover, the petitioner's contention expressly pleaded at the outset, that collection of such duplicate or double taxes would violate the Fourteenth Amendment, a most important question of federal law now squarely presented to this Court for the first time.

These vital issues of federal law demand consideration of this Court. The present case is one of first impression. Comment upon it in legal periodicals is far from uniform. See *49 Harvard L. Rev. 1378; 50 Harvard L. Rev. 956 at 960; 45 Yale L. J. 1176; 11 Temple L. Q. 103.* The five judges who have considered it have taken widely divergent views. The decision below in the First Circuit should not be the final word on the questions. Similar interpleader petitions under the 1936 Amendment are now pending in United States District Courts in Georgia, Maine and Iowa.[2] Many other cases may be brought (see Appendix A. *infra* p. 16). The denial on October 12, 1936 of the petition by the California respondents for certiorari was at a time when the case had not received the thorough attention which has now been disposed upon it. Considered opinions by the District Judge and by the majority and minority of the Circuit Court of Appeals are contained in the record. Nothing would be gained by further postponement of consideration by this Court for the inevitable conflicting decision of some other Circuit Court of Appeals.

The need of an authoritative decision on the avail-

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[2]District Court of the U. S. for the Southern District of Georgia, No. 343—*Spalding and Riley, Executors* v. *Parker et al.* (Georgia and New York taxes). District Court of the U. S. for the District of Maine, No. 67—*Hartshorne, Executor* v. *Chapman et al.* (Maine and ~~Florida~~ New York taxes). District Court of the U. S. for the Northern District of Iowa, No. 198—*Boyer, Executor* v. *Wegman et al.* (Iowa and ~~California~~ Oregon taxes).

ability of this remedy under the interpleader statute for the injustice of duplicate inheritance taxation is not diminished by the existence of the other avenue of approach being used by the State of Texas in the Green Estate litigation in Original No. now pending before this Court. As pointed out by the Attorney General of Texas, his position is based upon the lack of assets in his State. In the instant case there are assets of considerable value in both California and Massachusetts, and an original proceeding by either State might well be unavailable as it was in *New Jersey* v. *Pennsylvania*, 287 U. S. 580.

II

Error was committed by the court below in deciding questions of federal law in conflict with applicable decisions of this Court. The series of decisions in this Court which culminated in *First National Bank* v. *Maine*, 284 U. S. 312, established the constitutional principle that one State alone, that in which the decedent was domiciled at death, may collect an inheritance tax upon all his intangible property. The due process clause of the Fourteenth Amendment is there held to prohibit the imposition of an inheritance tax upon intangibles by the officials of any State except that of the domicile.

In spite of these authoritative decisions the court below expressly held that if there should be a collection of duplicate California and Massachusetts inheritance taxes in the instant case, each based

upon a finding of local domicile and enforced in accordance with the statutes of the State concerned, such collection would not deprive the petitioner of property without due process of law. To hold such inconsistent judicial findings of domicile "due process of law" is contrary to the spirit and decision in the *First National Bank* case.

Equally evident is the conflict of the decree below with those decisions of this Court illustrated by *Ex parte Young*, 209 U. S. 123, and *Sterling* v. *Constantin*, 287 U. S. 378, which have determined, as stated in the latter case at p. 393 that "where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief." In the recent case of *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, this Court found no difficulty in enjoining the tax officials of Pennsylvania from collecting an improper tax. Such an official lacks the immunity of the sovereign State and stands exposed in his individual capacity. Yet the Circuit Court of Appeals below, in complete disregard of this well established doctrine, held that the present suit is against the sovereign States of California and Massachusetts and therefore barred by the Eleventh Amendment. This error underlies the Circuit Court's exaggerated fear lest the equitable remedy sought by the executor prove ineffective

even if granted since no decree may issue against a sovereign State. In practice in such cases as *Sterling* v. *Constantin* and *City Bank Farmers Trust Co.* v. *Schnader, supra,* decrees enjoining wayward officials have proved sufficient to discourage similar action by succeeding officials in the name of the State. These cases demonstrate the error of the court below in questioning the adequacy of an equity decree or decrees which can require the executor to perform its obligations as to proper taxes and enjoin any respondent officials from further efforts to illegally collect the tax claimed by them.

In *United States* v. *Carver,* 260 U. S. 482, 490, it was stated "The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times." This well established rule was entirely disregarded by the court below which sought at length to interpret this Court's denial of certiorari in *Dorrance et al* v. *Martin,* 298 U. S. 678, and to a great extent based its decision in the present case upon that denial as authority. The majority opinion below states "And in denying certiorari the Supreme Court must also have concluded that the mere fact that the respective tax officials and courts of the two States had determined that the domicile of Dorrance, at the time of his death, was in their respective States, and that such determinations, assessments, and collection of the two taxes, based on inconsistent determinations, was

not in violation of the due process and equal protection clauses of the Fourteenth Amendment."[3] Such misconstruction of this Court's action in the *Dorrance* case should not be permitted to stand uncorrected.

III

Error was committed by the Court below in not distinguishing between the respective limitations of the Eleventh and Fourteenth Amendments, as heretofore judicially defined by this Court. The Court below unduly stresses the official positions of the several respondents—as agents and representatives of the respective States of Massachusetts and California and, erroneously relying on a line of cases based on *In re Ayers*, 123 U. S. 443, concludes that the action is against the States and that the States themselves have been impleaded. But the Court below fails to take into consideration the exact scope and effect of the immunities granted by the Eleventh Amendment as affected by the limitations of the later Fourteenth Amendment, developed by this Court in *Ex parte Young*, 209 U. S. 123, 150, and subsequent cases, such as *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, 246. We submit the opinions of the District Court and of the minority of the Circuit Court of Appeals more nearly follow the judicial construction given these Amendments by this Court.

Wherefore your petitioner prays that a writ of

---

[3] In the present case there has been no State court determination of taxes based upon domicile.

certiorari issue to the United States Circuit Court of Appeals for the First Circuit.

Respectfully submitted,

MERRILL S. JUNE
BRADLEY B. GILMAN
Attorneys for the Petitioner
340 Main Street
Worcester, Mass.

APPENDIX

A.

Reason for granting writ and statement by counsel for the California tax officials in their petition and brief in support seeking a writ of certiorari (No. 215, October Term, 1936) in this identical case at pp. 6 and 11:

> "3. It is of equally great importance to the estates of decedents in the many and ever increasing double domicile situations scattered over this country that the questions raised by this case be finally determined and settled by this Court so that they may know whether or not this Interpleader Act furnishes a proper method by which they may find relief from such a situation as existed with respect to the Dorrance estate."

*****

> "As a result of a recent inquiry directed by the petitioners' attorneys to the inheritance tax officials of the several States on the subject of double-domicile situations, it appears that there are many such situations where such an issue has already been raised or is likely to be raised in the near future and that there have been many others in recent years which have been disposed of in one way or another. The reports from the thirty States which have answered show the following as to the number of pending or prospective cases, after eliminating duplicating items, which cases involve in the aggregate taxes amounting to several hundred thousand dollars:

California	The case at bar with Massachusetts; 3 others with Oregon
Connecticut	10 with New York; 1 with Pennsylvania; 2 with Florida; 1 with Massachusetts; 1 with District of Columbia; 1 with New York and New Jersey.
Florida	Several with Pennsylvania.
Illinois	4 with California.
Kansas	1 with Wyoming.
Maine	2 or 3 with New York.
Massachusetts	(In addition to the case at bar) 1 with Vermont.
Mississippi	1 with Colorado.
Montana	Likely to have several with California.
New Hampshire	2 with Vermont.
New Jersey	1 suit pending with Pennsylvania; a score or more of such situations pending, principally involving Pennsylvania, New York or Connecticut.
Oregon	1 with Washington: 1 with Illinois.

"The answers also have indicated a keen interest in the case at bar and a desire to be kept in touch with its progress; have emphasized the great public importance of the question involved; and have expressed the hope that the question as to the applicability of the Interpleader Act, and its constitutionality if applicable, will be passed upon by this Court as soon as possible.

B.

Extract from 1935 report of National Tax Association Committee on Double Domicile in Inheritance Taxation (of which committee the respondent Riley was a member), reported in full in Commerce Clearing House Inheritance, Estate and Gift Tax Service, 6th Edition, Old Volume IV, Page 20609, Paragraph 4377.

"Your committee believes that this situation (i.e., such a double domicile situation as exists in the case at bar) arises with increasing frequency in this country. Among its causes are the increasing mobility of the American people, and the increasingly vast expenditures by the several states, which lead to a chaotic jumble of drastic revenue laws varying from state to state, with increasing strictness of enforcement, which in turn causes pressure to be put on individuals to minimize their taxes as much as they lawfully can. No blame can attach to individuals for doing this, and it is being increasingly done, not merely by very wealthy people, but by persons of only moderate riches. As between New York and Connecticut, for example, inquiries from taxpayers come almost every day to the tax commissioners of one state or the other as to the relative advantages of being domiciled in one state or the other. Tax consciousness, as well as tax evasion or tax avoidance is growing.

"We may also point out that this problem applies not merely to death taxes, but to income taxes and other forms of excise taxation."

* * * * * * *

"Double domicile cases are not of great frequency but in the opinion of your Committee are constantly growing more common. The essential injustice of a finding of double domicile is so striking that the National Tax Association deemed it advisable to appoint a Committee. In view of all the circumstances, the Committee will not hesitate to propose a remedy merely because it will involve time, trouble, and expense. If there is an evil here, it cannot be cured by a wave of the hand, or by passing a resolution."

FILE COPY

No. 34

In the Supreme Court of the United States

OCTOBER TERM, 1937.

- Supreme Court
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CHARLES ELMORE CR
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WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,
W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,
and
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MERRILL S. JUNE
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Attorneys for Petitioner
340 Main Street
Worcester, Massachusetts

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR, PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,

W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,

and

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,

RESPONDENTS

MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes Worcester County Trust Company, Executor, Petitioner in this cause, and alleges:

1. That on January 9, 1937, Harry B. Riley, a resident and citizen of the State of California, succeeded Ray L. Riley as Controller of the State of California. The respondents, Gentry and Sproul, continue to hold office. Harry B. Riley has adopted

the attitude of his predecessor in office (R. 4, Par. 9 of Complaint). The said Harry B. Riley, Gentry and Sproul are threatening to assess and attempt to collect from the petitioner the estate, inheritance and succession taxes imposed by the California Tax Statutes upon the estates of California decedents. Since January 9, 1937, they have directly or indirectly participated in this litigation both in the Circuit Court of Appeals for the First Circuit and in this Court.

2. That Sections 1001 and 1004 of the California Political Code, Section 385 of the California Code of Civil Procedure, the Act of February 13, 1925 (U. S. Code, Section 780) and Rule 19, sub-section 4 of this Court, permit the substitution of said Harry B. Riley as a party respondent in place of said Ray L. Riley.

WHEREFORE Worcester County Trust Company, Executor, moves that Harry B. Riley, Controller of the State of California be substituted as a party respondent in place of Ray L. Riley, Controller of the State of California, resigned.

WORCESTER COUNTY TRUST COMPANY, Executor

By,

Merrill S. June

Bradley B. Gilman

Attorneys

APPENDIX TO MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

A.

Certificate of Secretary of State of the State of California

(Original certificate attached to signed copy of this motion)

State of California
Department of State

I, FRANK C. JORDAN, Secretary of State of the State of California, do hereby certify that at the general election held throughout said State on the 6th day of November, 1934, RAY L. RILEY was elected Controller of the State of California;

That the official oath of office and bond of said Ray L. Riley, as said Controller, were duly filed in this office pursuant to law, and that said Ray L. Riley was, at all times between the 7th day of January, 1935, and the 9th day of January, 1937, the duly elected, qualified and acting Controller of the State of California.

I further certify that on the 9th day of January, 1937, the Governor of said State issued a Commission

appointing HARRY B. RILEY Controller of the State of California, vice Ray L. Riley, resigned; that his official oath of office and bond were duly filed in this office, and that said Harry B. Riley is, and has been at all times since said date, the duly appointed, qualified and acting Controller of the State of California.

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 7th day of June, A.D. 1937.

FRANK C. JORDON
Secretary of State
By Chas J. Hagerty
Deputy

B.

Applicable Statutes of the State of California

Section 1001 of the California Political Code provides:

> "A vacancy in the office of either the Secretary of State, Controller, Treasurer, Attorney General, Surveyor General, or Clerk of the Supreme Court must be filled by a person appointed by the Governor, who shall hold his office for the balance of the unexpired term."

Section 1004 of the California Political Code provides:

> "Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties and obligations of the officer whose vacancy he fills."

Section 385 of the California Code of Civil Procedure provides:

> "An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue."

C.

Applicable Federal Statute

Section 780 of the U. S. Code provides:

"Where during the pendency of an action, suit or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

(b) Similar proceedings may be had and taken where an action, suit, or proceeding brought by or against an officer of a State, or of a county, city, or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.

(c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have."

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CLERK

No. 34

In the Supreme Court of the United States

OCTOBER TERM, 1937

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA

W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA

RESPONDENTS

and

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS

INTERVENOR
(Former Respondent)

MEMORANDUM IN SUPPORT OF MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MERRILL S. JUNE
BRADLEY B. GILMAN
Attorneys for Petitioner
340 Main Street
Worcester, Massachusetts

In the Supreme Court of the United States

OCTOBER TERM, 1937

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FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

and

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS,
INTERVENOR
(Former Respondent)

MEMORANDUM IN SUPPORT OF MOTION TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA AS A PARTY RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

The petitioner, executor under the will of Robert H. Hunt, filed in the District Court for the District of Massachusetts a Bill in the Nature of Interpleader, interpleading certain respondents who were the tax officials of Massachusetts and California (R. 1–9),

alleging *inter alia* threatened collection of both Massachusetts and California estate, inheritance and succession taxes, each based upon inconsistent claims of domicile of the testator, Hunt. The respondents Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, the California tax officials, appeared specially and moved to dismiss the Bill (R. 15), alleging that the threatened acts were acts that could be done by them if at all as "public officers or representatives of the State of California" and that they were made respondents "solely in their capacity as public officers and representatives of the State of California in a matter in which the pecuniary interests of that State are involved," and that the court below was without jurisdiction. The District Court denied the motion to dismiss for want of jurisdiction (R. 23) and issued an order of injunction (R. 24).

Further proceedings in the District Court were stayed (R. 25) and the California respondents claimed an appeal from the aforementioned order and decree to the United States Circuit Court of Appeals for the First Circuit (R. 25, 26). On March 15, 1937 the Circuit Court vacated the injunction and remanded the case with directions to dismiss the bill of complaint for want of jurisdiction (R. 59). This mandate was stayed (R. 61). On May 24, 1937 certiorari was granted (R. 61), and Henry F. Long, Commissioner of Corporation and Taxation of Massachusetts, originally a respondent, admitted as a party on his motion to intervene.

The petitioner has now filed a motion to substitute Harry B. Riley, Controller of the State of California as a party respondent, his predecessor in that office, the said Ray L. Riley, having resigned and being no longer in that office. This motion was duly filed with the Clerk of this Court on June 31, 1937, and on July 6, 1937, during the six months' period following Controller Riley's separation from his office, counsel appeared before Mr. Justice Brandeis to submit the motion and show to this Court the substantial need of continuing the cause against Harry B. Riley. Counsel for Harry B. Riley was present to object to the proposed substitution. Mr. Justice Brandeis directed counsel to file with the Clerk of the Court briefs on the motion before the Court's first conference in the Fall.

It is submitted that the Record shows that all the issues that were before the District and the Circuit Courts are before this Court to be reviewed and that these issues are such that the substitution of Harry B. Riley at this stage of the proceedings will not be prejudicial either to him or to the other respondents or parties to the case. The issues raised by the respondents Gentry and Sproul are the only issues that Harry B. Riley can raise. He has no others.

But Harry B. Riley, since January 9, 1937 the Controller of the State of California, opposes the substitution. His position is an interesting one. His predecessor in that office, Ray L. Riley, resigned on that date. Under the California Inheritance Tax Law

the Controller is one of the officials responsible for the administration of that State's inheritance tax system. The respondent Gentry is that State's Inheritance Tax Attorney and the respondent Sproul is that State's Inheritance Tax Appraiser. They are still in office and continue with their claims. The Bill alleges that the several California respondents are acting "each severally or as agent one for another, individually or by their agent or agents." What is the position of Harry B. Riley individually and as Controller? Does he deny the contention of his predecessor in office and that of the other California tax officials, who admittedly are respondents, that their threatened acts were as "public officers" and that they were made respondents solely in their capacity as "public officers." Does he object to being made a party respondent in his individual or in his official capacity? If his associate and agent fellow tax officials are claiming to act only as "public officers," can he claim to act, if at all, only in an individual capacity? Does he deny he will attempt to exercise the power of his office to collect a tax? Is he prepared as a tax official of California to relinquish any claim for taxes from the petitioner as executor based on an alleged residence of the testator Hunt in California and thus alleviate the position of the executor between the conflicting and double inheritance tax claims?

Six months have now passed since the change of personnel in the Controller's office. There has been no

change of position by the California tax officials. Without mention of the resignation of Ray L. Riley, counsel for him and for the respondents, Gentry and Sproul, took steps in the Circuit Court of Appeals for the First Circuit to oppose the restoration of Henry F. Long as a party, and in the Supreme Court of the United States filed a brief opposing the granting of the writ of certiorari (on this Brief the respondent Gentry appeared as associate counsel). Now, the same counsel represents Harry B. Riley, the new Controller, and in his behalf must be held to maintain the right of the California tax officials (including the said Harry B. Riley) to collect the tax imposed by their statute without interference by the Federal Court. Thus it is evident that the successor Controller, Harry B. Riley, has adopted the attitude of predecessor, Ray L. Riley, and approves the action of the other California respondents.

Counsel for the California tax officials may call the court's attention to the recent case of *Ex Parte Laprade*, 289 U. S. 444. In that case no Arizona statute permitted the attempted substitution of the Attorney General of Arizona and, moreover, the successor in office was not alleged to be adopting his predecessor's attitude. The issue presented by the present petition to substitute Harry B. Riley was expressly reserved by the Court in the Laprade case. The opinion states at page 459:

> "We have no occasion to decide whether or in what circumstances a successor in office who adopts the attitude of his predecessor and is proceeding or threatening to proceed to enforce the statute may be substituted in a pending suit. That question is not here and is reserved."

There is every reason to permit the requested substitution. The new Controller has the same interest as his predecessor in claiming the tax and attempting its collection. The substitution should be a mere formality as in the innumerable cases where a new Federal Commissioner of Internal Revenue has been substituted as a party respondent in federal tax suits. See *Welch* v. *Helvering*, 290 U. S. 111 and numerous other cases in that October 1933 term of court. Such suits are against the Commissioner on appeal from the United States Board of Tax Appeals. In them, as in the present case, collection of any tax is in the future. The new incumbent of the office is the real party in interest. The suit is to prevent the collection of the tax by him. Such cases are to be contrasted with the suits against internal revenue collectors for refunds of taxes erroneously collected. In such cases no substitution of a successor collector is proper. There the action complained of is a tax collection in the past. In the instant case the action sought to be prevented is the collection of the tax by the new Controller and the other respondents. If, as seems evident, the statutes cited in the Appendix to the

printed motion permit such substitution of Harry B. Riley as a party respondent, the court should have no hesitation in granting the motion.

If the matter proves to be more than a formality, as apparently is the view of counsel for the California tax officials since he opposes the granting of the motion, the petitioner has no objection to the Court's entry of an order at this time granting to Harry B. Riley the right to argue his contention as to substitution at the same time the case is heard on the merits. One issue on the merits must necessarily be the identity of the respondents, whether as individual tax officials attempting to exercise the power of office as claimed by petitioner, or as the State of California, as maintained by respondents' counsel. It would seem no mistake to consider the matters raised in this motion at the argument of the case on the merits.

Respectfully submitted,

MERRILL S. JUNE
BRADLEY B. GILMAN
Attorneys for Worcester County Trust Company

August, 1937.

FILE COPY

In the

Supreme Court of the United States.

OCTOBER TERM, 1936.

No. [redacted] 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
Petitioner,

v.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,

AND

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, *Respondents.*

MOTION FOR LEAVE TO FILE PETITION FOR INTERVENTION AND PETITION FOR INTERVENTION.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

PAUL A. DEVER,
Attorney General of Massachusetts.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

In the

Supreme Court of the United States.

OCTOBER TERM, 1936.

No. 922.

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
Petitioner,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,
AND
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA, *Respondents.*

PETITION FOR INTERVENTION.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Henry F. Long, Commissioner of Corporations and Taxation for the Commonwealth of Massachusetts, brings this petition against the Worcester County Trust Company, Executor under the will of Robert H. Hunt, and Ray L. Riley, Controller of the State of California, *et al.*, respectively complainant, petitioner, and one of the respondents in the above-entitled proceeding, all citizens of the United States of America, the said Executor being a resident of the Commonwealth of Massachusetts and the said Ray L. Riley *et al.* being residents of the State of California, and alleges:

1. That the said Henry F. Long is the Commissioner of Corporations and Taxation for the Commonwealth of Massachusetts and as such is charged with the assessment and collection of Massachusetts inheritance and estate taxes and that he is a resident of the Commonwealth of Massachusetts;

2. That the above-entitled proceeding is an action in equity in the nature of interpleader and has been brought by the Worcester County Trust Company, Executor under the will of Robert H. Hunt, in the United States District Court for the District of Massachusetts, the respondents to said action being the said Ray L. Riley, Controller of the State of California, *et al.*, and the said Henry F. Long, and that said proceeding is still pending in said District Court;

3. That an interlocutory order granting an injunction against the respondents in said action was entered by said District Court on April 28, 1936, and that the said Ray L. Riley *et al.*, respondents, did appeal from said interlocutory order to the Circuit Court of Appeals for the First Circuit and that the said Henry F. Long, Commissioner as aforesaid, was asked to join in said appeal and did decline to join therein and that the said Henry F. Long, Commissioner as aforesaid, was not made a party to said appeal to said Circuit Court;

4. That the Circuit Court of Appeals for the First Circuit has reversed said District Court, with directions that "The order of the District Court granting a temporary injunction is vacated and the case is remanded to that Court with directions to dismiss the bill of complaint for want of jurisdiction," and that the said Henry F. Long, Commissioner as aforesaid, did file in the Circuit Court an application to be restored as a party respondent, which was on April 5, 1937, denied by the following order: "The application of Henry F. Long, Commissioner of Corpora-

tions and Taxation, filed April 2, 1937, in this case, is denied, without prejudice to renew his application in the Supreme Court of the United States if such Court takes the case on certiorari."

5. That the Executor, the Worcester County Trust Company, has filed in this Court a petition for certiorari to said United States Circuit Court of Appeals for the First Circuit;

6. That under the laws of Massachusetts, G.L. (Ter. Ed.) c. 65, §1, the Massachusetts legacy and succession tax is imposed upon "all property . . . which shall pass by will" and it has been determined that excise taxes paid other states on succession of property located in those states can be deducted by representatives of Massachusetts decedents in computing the succession tax due Massachusetts (*Hollis* v. *Treasurer*, 242 Mass. 163); that, if the jurisdiction of the Federal Courts in the case at bar is denied, as it has been denied by the decision in the Circuit Court of Appeals for the First Circuit, it is reasonable to expect that a $100,000 California tax will be assessed on a basis of residence in that State and collected from the estate of Robert H. Hunt, a Massachusetts decedent; that thereupon the Executor will claim that the property passing by will, which is subject to a Massachusetts succession tax, is correspondingly decreased; that such an inroad upon the Massachusetts revenue, which it is your petitioner's duty to collect, is a matter of grave concern to your petitioner and that he is therefore a party seriously interested in the outcome of the present litigation;

7. That your petitioner as Tax Commissioner also is directly interested in the subject of this action because of his position as Tax Commissioner and his duty to cooperate in establishing a fair and uniform system of collecting inheritance taxes throughout the country, so that

the present numerous controversies as to domicile between the various State Tax Commissioners can be solved with justice to all concerned;

8. That your petitioner, as above stated, is an interested party in this action and desirous that the plaintiff, Worcester County Trust Company, Executor, secure the relief demanded by it, and that therefore your petitioner prays that he be made a party defendant in the proceedings recently docketed in this Court.

Respectfully submitted,

HENRY F. LONG,
Commissioner of Corporations and Taxation,
By PAUL A. DEVER,
Attorney General of Massachusetts.

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No. 34

In the Supreme Court of the United States

OCTOBER TERM, 1937

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR

PETITIONER,

vs.

RAY L. RILEY, CONTROLLER, ET AL.,

RESPONDENTS

and

HENRY F. LONG, COMMISSIONER,

INTERVENOR

(Former Respondent)

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

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340 Main Street
Worcester, Massachusetts

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,
PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,
W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA,
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA,
RESPONDENTS

and

HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS
INTERVENOR
(Former Respondent)

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The majority and dissenting opinions of the Circuit Court of Appeals (R. 43–59) are reported in 89 F. (2d) 59. The opinion of the District Court for the

District of Massachusetts (R. 26–37) is reported in 14 Federal Supplement 754.

JURISDICTION

The final decree of the Circuit Court of Appeals was entered March 15, 1937 (R. 59). The petition for a writ of certiorari was filed April 23, 1937, and was granted May 24, 1937 (R. 61). The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, where the tax officials of California and Massachusetts each claim that a decedent died domiciled in their state and each claim and threaten to collect state inheritance taxes on a resident basis, the Federal District Court of Massachusetts was given jurisdiction by Section 24 of the Judicial Code as amended January 20, 1936, upon petition by the executor, prior to institution of tax determinative proceedings in the respective state courts, to enjoin such officials from attempting the collection of both taxes until the issue of domicile is decided by that Court.

2. Whether the threatened collection of both such state taxes involves a violation of the Fourteenth Amendment.

3. Whether if such jurisdiction was so given by said statute, the suit is against a state in violation of the Eleventh Amendment.

STATUTE INVOLVED

Section 24 of the Judicial Code, as amended by the Act of January 20, 1936, 49 Stat. 1096, provides in part:

> The district courts shall have original jurisdiction as follows:
>
> *****
>
> Twenty-sixth. —(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person *** being under any obligation written or unwritten to the amount of $500 or more, if—
>
> (i) Two or more adverse claimants, citizens of different States, are claiming to be entitled *** to any one or more of the benefits arising *** by virtue of any such obligation; and
>
> (ii) The complainant *** (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.
>
> *****
>
> (b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.
>
> (c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from

instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such *** obligation until the further order of the court;

*****

The 1936 statute is printed in full at pages 7–9 of the Record, and is reprinted in Appendix A to this brief, *infra*, page 46. It repealed the existing subparagraph (26) also printed in said Appendix A, *infra*, p. 46. We have set forth the present and previous Acts in parallel columns to emphasize the extensive changes made and increased equity jurisdiction granted in the 1936 amendment.

STATEMENT

Robert H. Hunt died on June 11, 1935. By his will the petitioner, formerly called Worcester Bank & Trust Company, was named executor; it duly qualified and was appointed executor by the Worcester County Probate Court on June 26, 1935, the date of the allowance of the will in Massachusetts. The deceased left real estate and bank deposits in California and bank deposits and considerable other intangible property in Massachusetts, the bulk of which is in the custody of the petitioner as executor (R. 3). The executor thereafter procured ancillary probate to be taken out in California (R. 3).

The tax officials of each state are seeking the benefit of the petitioner's fiduciary obligations as executor to settle all inheritance taxes. The Tax

Commissioner of Massachusetts asserts a succession tax due that state based on his claim of domicile in Massachusetts. The tax officials of California assert an inheritance tax due that state based on their claim of domicile in California.

The petitioner as executor, by reason of such conflicting and inconsistent claims, prepared a bill in the nature of interpleader (R. 2) under Section 24 (26) of the Judicial Code, as amended by the Act of January 20, 1936, U. S. C. Title 28, Section 41 (26), called in this brief the "Interpleader Act of 1936." This was filed in the District Court for the District of Massachusetts and an order (by Sweeney, J.) secured (R. 12) restraining the tax officials of both states from taking steps to assess, determine or collect inheritance taxes due from the Hunt Estate. The bill prayed particularly for a determination of the domicile of the decedent in order to ascertain which tax officials are proceeding illegally (R. 6).

The Tax Commissioner of Massachusetts entered his general appearance and answered that Hunt died domiciled in Massachusetts (R. 20). The tax officials of California appeared specially, objecting to the jurisdiction of the District Court, and moved to vacate the restraining order and to dismiss the bill of complaint on the ground that it constituted a suit against a sovereign state and was therefore prohibited by the Eleventh Amendment to the United States Constitution. They did not deny that the California probate court proceedings are ancillary or

of a non-resident estate. The record indicates no claim yet advanced to any California court that Robert H. Hunt died domiciled in that state. The motion to dismiss was denied after hearing and an injunction issued on April 28, 1936 (R. 24). The opinion of the District Court (by Brewster, J.) was entered April 27, 1936, upholding the jurisdiction of that Court (R. 26).

The Tax Commissioner of Massachusetts declined to join in the appeal taken by the tax officials of California to the Circuit Court of Appeals for the First Circuit (R. 39). Prior to argument the California tax officials petitioned this court for a writ of certiorari to review the decision of the District Court. On October 12, 1936, the petition was denied. *Ray L. Riley et al.* v. *Worcester County Trust Co.*, 299 U. S. 567, 57 S. Ct. 29. The case proceeded to argument before the Circuit Court of Appeals which by majority opinion dated March 15, 1937 (by Bingham, C. J., Wilson, J. concurring) reversed the District Court with directions that "The order of the District Court granting a temporary injunction is vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 59). Judge Morton dissented (R. 57). The mandate was stayed (R. 61). On May 24, 1937 certiorari was granted (R. 61), and Henry F. Long, Commissioner of Corporations and Taxation of Massachusetts, originally a respondent, was admitted as a party on his motion to intervene. The respond-

ent Ray L. Riley having in course of these proceedings resigned as Controller of the state of California, petitioner moved in this Court to substitute his successor in that office, Harry B. Riley.

SPECIFICATION OF ERRORS

The court below erred—

1. In construing the allegations of the complaint as treating the respondent tax officials solely as agents of the states rather than as individuals exercising the power of office.

2. In regarding the complaint as an attempt to implead the states of California and Massachusetts as adverse claimants.

3. In ruling that assessment and collection of inheritance taxes by both sets of tax officials acting in accordance with the laws of their respective states, but based on inconsistent findings as to the decedent's domicile, would not deprive the complainant of property without due process of law.

4. In ruling that by denial of certiorari in *Dorrance et al. v. Martin*, 298 U. S. 678, this Court "must also have concluded" that collection of two inheritance taxes based on inconsistent determinations of domicile "was not in violation of the due process and equal protection clauses of the Fourteenth Amendment."

5. In ruling that the respondents, even if regarded as individuals, are required to have adverse claims, one to the other.

6. In ruling that the District Court could not

issue a final decree without affecting the interest of the state of California.

7. In ruling that the proceeding in the District Court was not authorized by the Interpleader Act of January 20, 1936.

8. In ruling that the District Court had no jurisdiction to entertain the complaint.

9. In remanding the case to the District Court with directions to dismiss the bill for want of jurisdiction.

SUMMARY OF ARGUMENT

I.

The Hunt Estate is threatened with multiple inheritance taxation. Robert H. Hunt at the time of his death may have been domiciled in Massachusetts or in California, but not in both. Authoritative Court opinions that only the domiciliary state may tax the transfer by death of intangibles have been to date largely negatived in practice by inconsistent findings of domicile by the respective tax officials or courts of the states concerned. Witness the *Dorrance Estate* litigation. Unless the 1936 Interpleader Act provides a remedy for this admitted wrong, no relief from such paradoxical multiple taxation is available in our courts of justice.

II.

The Interpleader Act of 1936 provides a remedy by which multiple inheritance taxation may be avoided.

The complaint, a bill "in the nature of bills of interpleader," contains all necessary jurisdictional allegations. The petitioner is under obligation to administer the estate and to pay an inheritance tax; the respondent tax officials, citizens of different states, claim to be entitled to one or more of the benefits arising by virtue of that obligation; the petitioner has filed the necessary bond. A decree or decrees permanently enjoining one set of officials and ordering payment to the other will permit the discharge of the petitioner from further liability to the claimants. No injunction of a state court is sought. The Interpleader statute, when liberally construed as such remedial legislation should be, permits the court to grant adequate relief to the petitioner.

III.

So construed, the 1936 Interpleader Act does not violate the Eleventh Amendment. In order to provide some sanction behind the Fourteenth Amendment's guarantees of personal rights from state infringement, there was developed the principle enunciated in *Ex parte Young*, 209 U. S. 123, that the prohibition of the Eleventh Amendment does not extend to suits against an individual exercising the power of office and purporting to act for a state under an invalid statute or under a valid statute in a way not authorized by it. The respondent tax officials of California can be enjoined from collecting their tax based on a California domicile of Hunt, just as in *City Bank Farmers Trust Co.* v. *Schnader*, 291 U.S. 24, the Attor-

ney General of Pennsylvania was enjoined from collecting a tax based on a Pennsylvania situs of certain paintings.

ARGUMENT

I.

THE HUNT ESTATE WAS THREATENED WITH MULTIPLE[1] INHERITANCE TAXATION FOR WHICH PRIOR TO THE 1936 INTERPLEADER ACT THERE WAS NO REMEDY

It appears from the allegations of the Executor's verified bill—which are to be taken as admitted by the motion to dismiss filed by the respondents—that the Executor, a Massachusetts resident, first proceeded in the Court of Massachusetts upon the death of the testator, Robert H. Hunt, to probate the will and obtain its allowance in Massachusetts as that of a Massachusetts resident, and subsequently in the courts of California to procure ancillary administration in California as of an estate of a non-resident (R. 3). It also appears that the Massachusetts Tax Commissioner is determining the domicile in Massachusetts and threatening to assess and collect taxes (R. 3, 4) and that the California tax officials are determining the domicile in California and "are asserting and have threatened and are about to assess

[1]The designation of taxation as "multiple" as employed in this brief, refers to the tax situation arising in those cases where (to adopt the language of this Court) "two or more states have laid the same tax upon the same property interest in intangibles or upon its transfer at death." See *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308, at p. 314.

and attempt to collect" taxes based upon such determination (R. 4). These facts the California respondents admitted by their motion to dismiss. We desire to call particularly to the attention of this Court that there is nothing in the Record to show that any California state court has taken any action whatsoever except on the basis of the non-residence of Robert H. Hunt in California. The claims and actions complained of are those of the respondent tax officials and not of any court.

It is well established that although a man may maintain several residences he can have at one time only one domicile. *Tax Collector of Lowell* v. *Hanchett*, 240 Mass. 557, *Commonwealth* v. *Bogigian*, 265 Mass. 531. Section 11 of the *Restatement of Conflict of Laws* provides "Every person has at all times one domicil, and no person has more than one domicil at a time." It seems clear that Hunt at the time of his death was legally domiciled either in Massachusetts or California, but not in both.

No fundamental principle of taxation is better established today than that intangibles, including stocks, bonds, notes and credits, are subject to the imposition of an inheritance tax only by the domiciliary state.[2] *First National Bank of Boston* v. *Maine*,

[2]We are not here concerned with the questions arising in income taxation as in *New York ex rel. Cohn* v. *Graves*, 300 U. S. 308 and *New York ex rel. Whitney* v. *Graves*, 299 U. S. 366. nor with property or excise taxes as in *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 193, nor with any claims of a "business situs" as in *Beidler* v. *South Carolina Tax Commission*, 282 U. S. 1.

284 U. S. 312; *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. This Court has recently stated that "the objection of double taxation, . . . has been successfully urged in those cases where two or more states have laid the same tax upon the same property interest in intangibles or upon its transfer at death." *New York ex rel. Cohn* v. *Graves*, 300 U.S. 308 at p. 314. The estate of Mr. Hunt consisted of certain real estate in California and the following intangibles, "sizeable bank deposits both in Worcester, Massachusetts, and in Los Angeles, California, and considerable intangible personal property, the bulk of which is in the custody and possession of your complainant in Worcester, Massachusetts." (R. 3). It follows, therefore, that the Hunt Estate, insofar as its intangible assets were concerned, was subject to an inheritance tax payable either to the California tax officials or the Massachusetts Tax Commissioner, but that collection of both taxes would cause irreparable injury and constitute a taking of the estate's property without due process of law. *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24. Yet both state tax officials were and are claiming such taxes, and as estate assets are within the field of their activities, the executor is placed in the preposterous position of helplessly watching two wholly inconsistent attempts to collect taxes from the assets entrusted to its care and supervision.

Such a wrong would seem incredible, and the legal system permitting it ridiculous, if it were not for the fact that the law reports and popular magazines al-

ready contain the story of the Dorrance Estate litigation, as a result of which both Pennsylvania and New Jersey have actually collected huge inheritance taxes based on inconsistent claims of domicile. *Estate of Dorrance*, 309 Pa. 151; *In re Dorrance*, 115 N. J. Eq. 268; 116 N. J. Eq. 204; *Campbell's Soups* (Nov. 1935) 12 Fortune 69, 136. All efforts to secure relief in the federal courts failed. See *New Jersey* v. *Pennsylvania*, 287 U. S. 580; *Dorrance* v. *Pennsylvania*, 287 U. S. 660; *Hill* v. *Martin*, 296 U. S. 393. Whatever the reflection on American jurisprudence may be, it must be accepted that to date (*if we except the present proceeding*) no way has been found to place before an impartial forum the question of domicile, and thus prevent the possibility of multiple inheritance taxation. The Green Estate litigation is the most publicized of the current attempts to secure a remedy in the federal courts. *State of Texas* v. *State of Florida, et al.*, 300 U. S. 643. See also *Nevin, Ex.* v. *Martin*, Eq. No. 4805 in U. S. D. C. of N. J. where after collection of an inheritance tax by Pennsylvania, injunctive relief is sought against further taxation of the estate by the New Jersey officials. Separate trials in different jurisdictions give no guarantee of similar results. The evidence available in one case may differ from that in the other and it is but natural to find a court tending to support the local tax by finding domicile in its own jurisdiction. As pointed out by Zachariah Chaffee, Jr. in his illuminating article on *The Federal Interpleader Act of 1936* in 45 Yale

Law Journal at 1170, the decision in the first state court is not *res judicata* in the second, and although it is conceivable that each court might find the decedent lived in the other state, thus freeing the estate from both obligations, experience has proved it much more likely that a double tax will result. A single final determination of domicile has been secured only in one case and then only where the conflicting tax authorities agreed on a forum. *Matter of Trowbridge*, 266 N. Y. 283. The great public interest in securing a remedy for executors placed in this illogical position is shown by the importance conceded to the question in the reports of a Committee of the National Tax Association, a group largely made up of Tax Commissioners of the various states. See report reprinted in full in Commerce Clearing House Inheritance, Estate and Gift Tax Service, 6th Edition, Old Volume IV, Page 20609, Paragraph 4377.

The petitioner's effort to solve this distressing problem has received considerable favorable comment in current legal periodicals. See 49 Harvard Law Review 1378; 50 Harvard Law Review 956 at 960, and 1121; 45 Yale Law Journal 1176; 31 Illinois Law Review 546; 85 University of Pennsylvania Law Review 844.

II.

The Federal Interpleader Act of 1936 Provides a Remedy by which Multiple Inheritance Taxation May Be Avoided in a Case of Disputed Domicile Such as is Presented in the Bill of Complaint.

Of paramount importance is the construction of the Act of January 20, 1936, under which this proceeding has been commenced. The extensive 1936 amendments to the Interpleader Act, indicated in the reprint of the Act in Appendix A, *infra*, p. 46, show that it was intended to afford relief in cases outside the scope of the earlier interpleader statute. A mere reading of the Act compels the conclusion that it was drawn in the broadest terms.

The traditional limitations of interpleader were studiously avoided by providing for bills in the nature of interpleader, and by other provisions removing the restrictions surrounding the strict bill of interpleader and permitting general equity relief. It cannot seriously be contended that the statute has application only to the exact situations considered by the Congress that passed it. If, as the District Court and the minority of the Circuit Court of Appeals found, the present bill stated a case within the fair intendment of the Act, the relief afforded by its provisions should be granted. See *Caminetti* v. *United States*, 242 U. S. 470, 490. In construing the statute to grant no relief to the estates of deceased

persons threatened with multiple inheritance taxation, the Court below disregarded the cardinal principle that a construction which causes grave public injury or which renders the statute inefficient should be avoided. See *Bird* v. *United States*, 187 U. S. 118, 124. In *Knowlton* v. *Moore*, 178 U. S. 41 at 77 it was stated by this Court: "We are, therefore, bound to give heed to the rule, that where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute. *Bate Refrigerating Co.* v. *Sulzeberger*, 157 U. S. 1, 37; *Wilson* v. *Rousseau*, 4 How. 646, 680; *Bloomer* v. *McQuewan*, 14 How. 539, 553; *Blake* v. *National Banks*, 23 Wall. 307, 320; *United States* v. *Kirby*, 7 Wall. 482, 486."

A careful study of the statute demonstrates that the bill is well within its scope. See 49 Harvard Law Review 1378 for a note approving the decision in the District Court and stating "The terms of the statute seem to warrant its application to the present vexing problem." The dissenting opinion of Judge Morton states "I agree that the Interpleader Act as amended is broad enough to cover the present case of conflicting claims to an estate tax which can be justly collected by only one of the claimants." (R. 57). As amended, Section 24 of the Judicial Code gives the District Court jurisdiction of suits in equity begun by *bills in the nature of bills of interpleader* by any person having in his possession $500 or more, *or*

being under any obligation written or unwritten to the amount of $500, if (i) two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or if (ii) two or more adverse claimants, citizens of different states, are claiming to be entitled to any *one or more of the benefits arising by virtue of any such obligation,* and in either event the suit may be entertained *although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.*[3] The bill of complaint contains allegations supplying every one of these jurisdictional requirements. The executor has over $500 in its possession to which citizens of California and Massachusetts have set up adverse claims. The executor is under an obligation to settle all proper inheritance taxes, and the tax officials of each state, adversely to each other, are seeking a benefit arising from that obligation. See Massachusetts General Laws, Chapter 65, Sections 1, 6 and 9, and California Inheritance Tax Act, Sections 1 and 3, both printed in the Appendix, *infra,* pages 54, 57.

It may be contended that the Act should not be applicable to conflicting claims for taxes because such practice would interfere with the prompt collection of revenues. Where a tax is valid, its prompt collection should not be hampered, we grant, but there is cer-

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[3]The jurisdictional requirements which we have italicized appeared for the first time in the broadly worded 1936 Amendment to the Interpleader Act. See Appendix A, *infra,* p. 46.

tainly no public policy against interference with the collection of invalid taxes where no adequate remedy at law is available. The flood of injunctive relief granted all over the country against the collection of the federal processing taxes, later invalidated by the decision in *United States* v. *Butler*, 297 U. S. 1, is too recent to permit one to put much weight in any public policy argument on this point. The recent amendment of Section 24 of the Judicial Code by the Act of August 21, 1937, although not applicable to this case which was pending at the time of its enactment, expressly limits its prohibition against injunctions to stay tax collections to cases "where a plain, speedy and efficient remedy may be had at law or in equity." The respondents in this connection have previously relied on *Welch* v. *Boston*, 208 Mass. 326, where interpleader under state practice was denied to a citizen in danger of double taxation. The 1936 Amendment to the Federal Interpleader Act was passed just to obviate such technical obstacles to relief as proved insurmountable in this Massachusetts case. There the Court pointed out the lack of privity between the claimants, the interest of the stakeholder in the outcome of the suit, and the absence of a particular bit of property in court to which claims were asserted. It appears from the legislative history of the Interpleader Act and the language of the Amendment itself that Congress was seeking to avoid just such barriers to relief.

An important question of construction of the

statute, not dealt with by the Court below, relates to the petitioner's obligation from which there arises the benefit claimed by the California respondents. The petitioner's obligation is that of a testamentary executor to settle all proper inheritance taxes of the estate. The petitioner was named in the testator's will as his executor. Regardless of the ultimate determination of domicile (the will has been proved and allowed in Massachusetts and the executor appointed there) the executor named in the will is obligated to cause the will to be probated and to cause the decedent's property to be administered. This includes the settlement of all proper inheritance taxes in whatever states. As alleged in the petition, the estate is largely in the petitioner's custody. The California and Massachusetts taxes asserted by the several respondents are generated by the devises and legacies in that will, for without it the decedent's property would pass by descent in different proportions than the legacies upon which the various succession taxes are calculated. The tax claims must therefore depend upon the probate of the will in the respective states, and this probate is a duty and obligation of the executor. Even if in one state proceedings are in form ancillary, the testamentary executor is still under the obligations above recited, and the tax officials of that state are seeking, in their tax claims, a benefit arising by virtue of such obligations resting upon the testamentary executor, even if appointed in another state. There are assets in two states. The tax statutes of

each embrace within their definitions all executors and administrators and all personal property wherever situated, and impose tax liens on all assets. See Appendices B and C, *infra*, pp. 54, 57. The bulk of the decendent's assets are now in Massachusetts; the remainder are in California. To enforce the California tax its officials may procure a determination of domicile in California by that state's court, and will procure an assessment of tax measured on that basis of residence. At the same time the testamentary executor will be faced with like proceedings by Massachusetts tax officials in the courts of that Commonwealth with a consequent determination of Massachusetts domicile and a tax on that basis of residence. In this situation the testamentary executor is faced with duties and obligations both in California and Massachusetts by virtue of which benefits arise for the respective tax officials. To add to the executor's obligation, the California respondents, if the California assets prove to be insufficient to satisfy their tax, will doubtless insist that the Massachusetts executor respect their claim, and relying on the decision omitted from their brief in the Court below, *Milwaukee County* v. *M. E. White Company*, 296 U. S. 268, come into the Massachusetts courts to collect their tax judgment. These California respondents in such an event would find support in the language of this Court in that case at p. 276, where it was said "The very purpose of the full faith and credit clause was to alter the status of the several states

as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." This recent decision makes it clear that such a tax judgment in California is entitled under the Constitution to full faith and credit in the Massachusetts state courts. Prior to this decision the New York Court of Appeals in *Colorado* v. *Harbeck*, 232 N. Y. 71, recognized the existence of a liability to pay a Colorado succession tax, but held the tax unenforcible against assets in New York. However, in *People of New York* v. *Coe Mfg. Co.*, 112 N. J. L. 536, a suit on a New York court's judgment for a New York franchise tax was entertained by the New Jersey court. Whether or not respondents could recover in Massachusetts for the California succession tax, the fact remains that the petitioner is obligated to pay a tax and is under a fidiciary obligation to settle the estate and its liabilities and therefore within the protection of the Interpleader Act. The mere existence of the obligations satisfies the jurisdictional requirement.

The Court below questioned whether the District Court could discharge the executor from the obligations acknowledged by the petitioner. (R. 57). The bill of complaint expressly alleges that if the question of domicile is finally determined, there is little likeli-

hood of any controversies between the testamentary executor and the tax officials of either state. See R. 4, 5. The Interpleader Act directs that such a discharge shall be accomplished. And it also provides that the Court shall "enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same" (R. 8). The executor has given a bond to the District Court conditioned upon its compliance with any future order or decree of the Court "with respect to the subject matter of the controversy" (R. 9, 10). The Federal Court sitting in equity can issue from time to time orders or decrees to require the executor to comply with the statutory requirements of the state of domicile, and with the orders of its court relating to taxes, etc. Until the executor has made such payments and complied with such state court requirements it is not relieved of its obligation, nor discharged of its liability, nor should the Federal Court until that time discharge the executor from its obligations. The Federal Court will not, therefore, have to determine the tax liability to any particular state. The executor will not drop out of the proceedings, until the question of domicile and the executor's obligation has been settled. The District Judge's opinion shows plainly that he believed the proper relief can be granted the complainant. The executor is not now disturbed as to the efficacy of that relief. It is possible, of course, that if the District Court finds the domicile to be in Massachusetts, the California tax authorities may

still seize and confiscate the assets of the estate within their control. In such an event the question of the value of a discharge from the federal court will arise. We submit that, at least on the present record, the presumption should be that, if the federal court directs responsible California tax officials to take no steps toward the determination of any taxes on the Hunt Estate, neither they nor any other newly appointed officers of that state will disregard the order and attempt to collect the taxes. Certainly it is no argument today to say that in the future it may be necessary to enjoin other officers in order to guarantee adequate relief to the executor. Once the present litigation is concluded there will be no controversy and but little delay in adjusting what taxes are due, and closing the estate. See Paragraph 11 of complaint (R. 4). For example, the Court, if it determines domicile in California or Massachusetts, may order the executor to proceed at once to settle the taxes of such state, and the Executor is under bond to comply (R. 9, 10).

The effect of the holding of the Court below was to exempt from the Interpleader Act all state officers. Nothing in the Act suggests that Congress had any such intent. Certainly it would be necessary to use other language in the statute before any reasonable person would construe "two or more adverse claimants, citizens of different States" as excluding citizens who also hold office under their respective state governments. The Court below was so convinced that

these proceedings are brought against the state of California that it used that mistaken conviction as a premise. Were the proceedings against California, it would be necessary to dismiss the bill, either on the ground that it was prohibited by the Eleventh Amendment, or that states are not "citizens" within the meaning of the Interpleader Act. The two grounds are equally inapplicable to the true state of facts in this case. We submit that the question of statutory construction must be decided on the same grounds and in the same way as is the accompanying constitutional question of whether these proceedings do or do not constitute a suit in equity "prosecuted against one of the United States" within the prohibition of the Eleventh Amendment. In final analysis the two questions must be the same. If, as decided by the District Court, under the doctrine of *Ex parte Young*, 209 U. S. 123, approved in later decisions of this Court, this proceeding for relief against the illegal action of these tax officials is not prohibited by the Eleventh Amendment, it should follow that the scope of the Interpleader Act is equally broad and includes this bill against certain named individuals, citizens of California and Massachusetts, who are here alleged to be acting beyond their authority as state officials. If we assume for the moment that the bill of complaint is against the individual citizens mentioned in it, there seems no reason to exempt them from the operation of the Interpleader Act. We seek no strained construction of the Act, but

merely wish to include in the phrase "citizens of different States" all citizens, whether holding state office or not.

It may be suggested that the District Court disregarded the provisions of Section 266 of the Judicial Code in issuing the injunction without calling a three judge court to consider the bill of complaint. A complete answer to this contention is that Section 266 has no application except where there is threatened enforcement of an unconstitutional statute. Here there is no such threat. The Massachusetts and California statutes are valid enough. The complaint is that certain citizens exercising their power of office are mistakenly and illegally abusing that power in a way to deprive the Hunt Estate of its constitutional rights. It is well settled that Section 266 does not require a three judge court where the suit is to enjoin collection of a tax under a statute the constitutionality of which is admitted. *Gully* v. *Interstate Natural Gas Company*, 292 U. S. 16; *Lykins* v. *Chesapeake Railroad Co.* 209 Fed. 573, 126 C. C. A. 395; *Connecting Gas Co.* v. *Imes*, 11F. (2d) 191. The bill nowhere alleges that a statute of either state is unconstitutional and no such claim is made. Section 266 of the Judicial Code is therefore inapplicable. Moreover if a claim of unconstitutionality of a state statute had been advanced, no three judge court would have been necessary for the 1936 Amendment to the Interpleader Act expressly states that

> Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them **** which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine.

Clearly action by a single judge of the District Court, without concurrent action by any judge of the District or Circuit Courts is contemplated by the statute.

However, if Judge Brewster erred in not convening a three judge court, his error could not have been corrected on appeal to the Circuit Court of Appeals, *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10. Had such an error been made by the District Judge, the Circuit Court of Appeals would have had no jurisdiction of an appeal by the California respondents from such an injunctive order, and the aggrieved party's remedy would be by way of writ of mandamus in this Court. If this Court should be of opinion that Section 266 applied and required a three judge court, the decree below should be reversed with an order that the appeal *from the injunction* be dismissed for want of jurisdiction and the case remanded to the District Court. *Stratton* v. *St. Louis Southwestern Ry. Co.*, 282 U. S. 10.

In any event the Circuit Court of Appeals erred in considering the appeal from the denial by the District Court of the motion to dismiss, as the order of the

District Court denying the motion to dismiss was an interlocutory order, not then appealable, in accordance with the rules of Court and the decisions. Such a denial of the motion to dismiss could not have been made by a three judge court and we submit was properly made by the single judge. See *J. & A. Freiberg Co.* v. *Dawson*, 274 Fed. 420, affirmed 255 U. S. 288; *Brown Drug Co.* v. *U. S.*, 235 Fed. 603.

The Court below refused to view the respondent tax officials as "claimants" within the meaning of the Interpleader Act. They are certainly claiming the right to operate their machinery of tax assessment and collection upon the assets entrusted to the petitioner by the decedent's will. Until the issue of domicile is decided, it cannot be ascertained which officials are acting with authority. Until then when one can substantiate his claim of authority and be replaced as a claimant by the state he now claims to represent, all must be viewed as parties to the suit and "claimants" within the statute. Only thus could the suit in *Ex parte Young*, 209 U. S. 123, be maintained against the Attorney General of Minnesota. He had no personal profit in enforcing the railroad rates there questioned. Nor did Attorney General Schnader have any personal claim to the tax collected in *City Bank Farmers Trust Company* v. *Schnader*, 293 U. S. 112, but that suit was held to be against him as a party rather than against Pennsylvania. Similarly in the instant case the claims are now made by the respondent tax officials and the jurisdiction of the

federal courts is supported by those claims until such time as it may be determined that any claim is authorized and made on behalf of a state.

Nor would there be importance in the contention that one of the respondents (Sproul) is a court officer, if such were the fact. See his duties as set forth in Sections 14 and 16 of the California Inheritance Tax Act printed in Appendix C., *infra* p. 60. The important fact is that all are occupying state office, possessing state power and attempting to use that power. None of these respondents have reported to a state court and none have as yet gone into court. The state court has no duty to seek out revenue or initiate tax proceedings. The record discloses no court action in California and it is apparent that the respondent Sproul has not yet made his report to the court. No injunction has been issued to stay proceedings in the California courts, but we submit that it could be issued as it was in *Dugas* v. *American Surety Co.*, 300 U. S. 414; and *Fidelity & Deposit Company of Maryland* v. *A. S. Reid & Co.*, 16 F. (2d) 502. See also *Eagle, Star & British Dominions* v. *Tadlock*, 14 F. Supp. 933. The same clause in the Interpleader Act which allows the service of the District Court's process outside the judicial district "notwithstanding any provision of the Judicial Code to the contrary" expressly allows orders enjoining the claimants "from instituting or prosecuting any suit or proceeding in any State court or in any United States court." In the court below the appellants

admitted[4] that this clause in the Interpleader Act was intended to refer to Section 265 of the Judicial Code, which is the only bar to injunctive relief against state court proceedings.

In our discussion of the construction of the Interpleader Act, mention must be made of the respondents' suggestion that the statute should be construed so as to avoid serious doubt as to its constitutionality. That principle of construction is well established, and if the District Court had labored under any such serious doubt as did the Circuit Court of Appeals the bill might well have been dismissed. The petitioner's position is, of course, that the doctrine expounded in *Ex Parte Young*, 209 U. S. 123, and similar cases, removes all constitutional doubt as to the right of the complainant to secure relief. The principle of law relied on by the respondents is entirely sound, but inapplicable.

III.

So construed the Interpleader Act does not violate the Eleventh Amendment to the United States Constitution

"Where state officials, purporting to act under state authority, invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief." *Ex parte Young*, 209 U. S.

[4] At page 22 of their brief.

123; *Home Telephone & Telegraph Co.* v. *Los Angeles*, 227 U. S. 278; *Truax* v. *Raich*, 239 U. S. 33; *Cavanaugh* v. *Looney*, 248 U. S. 453; *Terrace* v. *Thompson*, 263 U. S. 197.

This quotation from this Court's opinion in *Sterling* v. *Constantin*, 287 U. S. 378, at 393, expresses briefly the principle of constitutional law on which the decision of the District Court in the instant case was based, and which, we contend, was wholly ignored by the Circuit Court of Appeals. Although the provisions of the Fourteenth Amendment do not apply as between private individuals, any one who is in possession of state power and attempting to use that power to the doing of wrongs which the Amendment forbids may be prevented from so doing by a Federal Court.

The Eleventh Amendment to the Constitution of the United States prohibits the extension of the federal judicial process to any suit against one of the states by citizens of another state. Its ratification in 1793 followed this Court's decision in *Chisholm* v. *Georgia*, 2 Dall. 419, and presumably the Amendment was primarily intended to cover the situation which prompted its enactment, namely, a suit to collect a debt from a state. It was at first narrowly construed. See *Osborn* v. *United States Bank*, 9 Wheat. 738. At a subsequent time this Court reacted toward a literal interpretation. See *In re Ayers*, 123 U. S. 443, and other decisions of that period. The Fourteenth Amendment was ratified in

1868. In 1908 the decision in *Ex parte Young*, 209 U. S. 123, solved what had almost developed into a conflict between the Eleventh and Fourteenth Amendments by giving relief to a person whose rights guaranteed by the Fourteenth Amendment were jeopardized by persons purporting to act as officers of a state, and permitting the federal courts to entertain a suit by the aggrieved person against the individual state officer whose action was immediately endangering the plaintiff's constitutional rights. This relief is due whether the individual officer is following literally the mandate of the state law or proceeding against its express commands. He "invades, in the course of his duties, a private right secured by the federal Constitution." *Iowa-Des Moines National Bank* v. *Bennett*, 284 U. S. 239, at 246. The prerequisite is that the respondent occupy a state office and be in possession of state power which he is attempting to use to the doing of wrongs forbidden by the Fourteenth Amendment. See *Home Telephone & Telegraph Company* v. *Los Angeles*, 227 U. S. 278. It is fallacious to contend that the officer is a representative of the state and the state is being sued. The Court below fell into this error. The suit is against the individual officer. This modern construction of the Eleventh Amendment which gives full scope to the guarantees later declared in the Fourteenth Amendment has become the established law of the land. Any other construction might well involve a question as to whether the Fourteenth Amendment

in any way curtailed the prohibition of the earlier Eleventh Amendment. No longer does the prohibition of the Eleventh Amendment extend to suits against an individual purporting to act for a state under an invalid statute or under a valid statute in a way not authorized by it. Such suits are not against the state, but against persons individually.

The instant suit is necessary to restrain infringement of the petitioner's constitutional rights by certain named individuals, citizens of California and Massachusetts, who are here attempting to extend their activities beyond the cloak of sovereignty that their respective states throw about their authorized acts. Such persons, possessing state power, and attempting to use that power in wrongful action prohibited by the Fourteenth Amendment, may be enjoined by a federal court. The applicable principle is well stated in *In re Ayers*, 123 U. S. 443, at 507, where the Court says:

> If, therefore, an individual, acting under the assumed authority of a State, as one of its officers, and under color of its laws, comes into conflict with the superior authority of a valid law of the United States, he is stripped of his representative character, and subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

No different application of the Eleventh Amendment is made where the state officers are acting under

a tax statute. If the statute is unconstitutional, nothing prevents an injunction against the individual purporting to act under it. *Ex parte Tyler*, 149 U. S. 164; *Poindexter* v. *Greenhow*, 114 U. S. 270. Where the statute is admittedly constitutional but the officers are enforcing it in a way that violates the taxpayer's constitutional rights, an injunction will be granted against such action which is unauthorized by the statute. In *Greene* v. *Louisville Railway Co.* 244 U. S. 499, the Kentucky franchise tax statute was valid, but the defendants constituting the Board of Valuation and Assessment of the state of Kentucky discriminated against the plaintiff railroad by assessing it on a basis of 75 per cent of actual values where property in general was assessed on a basis of 52 per cent. The Court considered the Eleventh Amendment, decided it had jurisdiction and enjoined the state officials.

In a similar earlier case tax collection was restrained where the tax statute was constitutional but the action of the collecting officers discriminatory and invalid. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20. In *Reagan* v. *Farmers Loan & Trust Co.*, 154 U. S. 362, at 390, the court stated:

> Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legisla-

> tive hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts.

In commenting upon the Interpleader Act, Judge Morton of the Court below stated in his dissenting opinion "It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or the other of the claimants, but denies indebtedness or obligation to each one separately." (R. 57, 58.) We have in the present case one group of tax officials, namely, those of California, and another tax official, of Massachusetts, each claiming that the domicile of the decedent was in his respective state and that the state inheritance tax based on such domicile should be paid to his state. The Court can neither assume nor determine that either set of officials is acting legally without a hearing on the facts as to the subject matter of the controversey, namely, the domicile of the decedent. A hearing on the merits is required. See *Mosher* v. *Phoenix*, 287 U. S. 29, 32; *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, 293 U. S. 112. It must necessarily follow from such an inquiry and determi-

nation that one set of officials is claiming illegally and if so they have no immunity as officials. Their claims are personal, rather than the claims of the state they say they represent. The situation is clearly analyzed by Chaffee in his article on the Federal Interpleader Act of 1936 in 45 Yale Law Journal at page 1173 as follows:

> The tax official of one state (but of which state is uncertain) is admittedly acting within his constitutional and statutory powers. It may be argued, consequently, that proceedings against this official (whichever he is) are really against his state and thus outside the jurisdiction of a United States court. On the other hand, the official of one state is proceeding in violation of the Fourteenth Amendment, and interpleader is the best way to find out which state official it is. Thus, as to each claim, a genuine constitutional doubt exists. This seems sufficient to bring the case within the principle of *Ex parte Young*. After all, the possibility that a defendant official's action is valid is present in every federal equity suit against an official of a state or of the United States. The court does not know until the case is decided whether or not he was acting lawfully. In many cases jurisdiction was taken to enjoin official action that was ultimately held constitutional. For instance, in *Ex parte Young* itself the freight rate at issue was eventually sustained. Suits in equity against state and federal officials have become the customary process for settling grave constitu-

> tional questions created by administrative orders, and in recent years the Supreme Court has rarely let the supposed principle of sovereign immunity interfere with the smooth operation of this process. Therefore, it is to be hoped that the Eleventh Amendment will not prevent federal interpleader to determine which of two state inheritance taxes is lawful. The need to decide the constitutional question in equity is much greater here than in the usual injunction suit against state officials, because federal interpleader is virtually the only practicable remedy. Neither state nor federal courts can offer any satisfactory alternative.

A Federal Court in equity has jurisdiction to enjoin unlawful tax proceedings, especially where the threatened enforcement of a state law contravenes the Federal Constitution and where it is essential to protect personal rights guaranteed by the Fourteenth Amendment to the Federal Constitution against injuries that cannot otherwise be remedied. The complaint alleges irreparable damage, an allegation which must be taken as admitted on consideration of the motion to dismiss. Prior to the 1936 Interpleader Amendment the Court had established these equitable principles in the case of *City Bank Farmers Trust Company* v. *Schnader*, 291 U. S. 24. See also *Terrace* v. *Thompson*, 263 U. S. 197 and *Greene* v. *Louisville Ry.*, 244 U. S. 499. Here both sets of tax officials assume to act for a principal but in the case of one or the other the acts are wrongful and the

agent cannot escape the consequences of his wrongful act.

Our position on this main issue presented by the petition is amply supported by *Poindexter* v. *Greenhow*, 114 U. S. 270. In that case a collector of taxes in Virginia refused a lawful tender for the payment of taxes and seized property of the taxpayer. The Court held that in so doing he ceased to be an officer of the law and became a private wrongdoer. The tender was in currency made valid by Congressional Act and in coupons which the state had by contract agreed to accept in tax payments, though it had changed its position and later refused to accept them. The Court, at pages 288 and 290, stated that the defendant, sued as a wrongdoer, sought

> to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him. ***** The state is a political corporate body, can act only through agents, and can command only by laws ***** The Constitution of the United States and its own contract, both irrepealable by any act on its part, are the law of Virginia ***** He stands then stripped of his official character; and confessing a personal violation of the plaintiff's rights for which he must personally answer, he is without defence. ***** That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but is the mere wrong and trespass of those

> individual persons who falsely speak and act in its name.

In speaking of the Eleventh Amendment, the Court continued at page 297:

> The fancied inconvenience of an interference with the collection of its taxes by the government of Virginia, by suits against its tax collectors, vanishes at once upon the suggestion that such interference is not possible, except when that government seeks to enforce the collection of its taxes contrary to the law and contract of the State, and in violation of the Constitution of the United States. The immunity from suit by the State now invoked, vainly, to protect the individual wrongdoers, finds no warrant in the Eleventh Amendment to the Constitution and is, in fact, a protest against the enforcement of that other provision which forbids any State from passing laws impairing the obligation of contracts.

In the present proceeding the California tax officials' position in no way differs from that of the Virginia collector in the *Poindexter* case.

In respect to the Eleventh Amendment the Circuit Court of Appeals took several positions. It first disregarded entirely the distinction emphasized in *Ex parte Young*, 209 U. S. 123, between a state and officers of a state acting beyond their authority, and sought to limit its vision to the simple proposition that California and Massachusetts are the ultimate parties in interest in this litigation. Such a superficial analysis

of the case disregards all precedent. The District Court refused to take such a limited view of the matter when it stated:

> A short cut to the answer would be to hold that the two states were the adverse claimants and that consequently the jurisdictional requirement of the statute was not met since a state cannot be a citizen. I do not believe, however, that the matter can or ought to be dismissed in so summary a fashion (R. 30).

Quotations from opinions prohibiting suits against sovereign states are scarcely helpful. Their truth is apparent, but so also is their superficial relation to the real underlying issue in the instant case. In *Iowa Des Moines National Bank* v. *Bennett*, 284 U. S. 239 at 246, this Court distinguished such precedents by stating in a footnote: "Cases discussing the question of what constitutes a suit against the State within the meaning of the Eleventh Amendment ***** have no bearing upon the power of this Court to protect rights secured by the federal Constitution."

The complaint does not allege in so many words that the respondents acted arbitrarily and without substantial evidence to support their determination of domicile. The majority of the Court below is of opinion (R. 52) that had the complaint used this particular language the character of the suit would have been altered and the sovereign states not parties to it. It also erroneously assumes that each set of tax officials acted in conformity to law and upon ade-

quate evidence (R. 53). The complaint does allege that the action threatened by the individual respondents is upon inconsistent claims, is causing petitioner irreparable injury and depriving it of property without due process of law. (R. 5). Nicety in diction may be desirable, but we submit the Court below has demonstrated the narrowness of its construction of the Interpleader Act by hanging its decision on such grounds. Whatever language were used to characterize the action of the individual respondents, they would still hold state offices and the maintenance of the suit would depend upon the applicability of the doctrine of *Ex parte Young*, 209 U. S. 123, rather than on the presence or absence of the word "arbitrary" in the complaint.

The Court below also takes the novel position that no constitutional rights of the petitioner will be violated even though both California and Massachusetts inheritance taxes, based on inconsistent findings of domicile, are collected. From this premise it proceeds to the conclusion that the petitioner is entitled to no relief against the tax officials even if their individual capacity is recognized. This startling position that due process of law would not be denied by such multiple inheritance taxation, is contrary to all recent rulings of this Court. We submit that the District Court was correct in concluding that "It is, therefore, obvious that if the taxing officials of both of these states carry out their threat of imposing an inheritance tax upon the transfer of decedent's intangibles,

one or the other of the states will be violating the Fourteenth Amendment" (R. 29). This Court reached that exact conclusion in *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24. It is noteworthy that this recent decision was not even mentioned in the opinion of the Court below. No thorough consideration can be given to the instant case without a careful analysis of this precedent. There a bill was brought by the New York executor for an injunction alleging irreparable injury to the estate by reason of the threat of the Pennsylvania tax authorities to collect an inheritance tax upon certain paintings temporarily in Pennsylvania (but alleged by the authorities to have a tax situs there) at the time of the decedent's death, and a decree dismissing the bill was reversed. The bill in the instant case is very similar to that in the *Schnader* case. In each the alleged violation of the Fourteenth Amendment is the threat by the officials of a state having personal property in its control to collect a tax which cannot legally be assessed upon such a non-resident estate.

If the opinion of the Circuit Court of Appeals were sound that multiple inheritance taxation based on inconsistent determinations of domicile does not deny due process, the entire basis for the jurisdiction taken in the *Schnader* case would vanish. If, on the other hand a denial of due process *was* threatened by the attempt of the Pennsylvania officials to determine that the paintings had a taxable situs in Pennsylvania, it must follow that a denial of due process

is threatened in the instant case by the assertion of the California officials that the decedent was domiciled in California. In such cases, where the constitutional questions are raised at the outset, the federal court must itself ultimately review the evidence and determine for itself the true domicile or situs. Thus when the *Schnader* case came before this Court the second time for decision of the case on the merits, the Tax Commissioner of New York filed a brief *amicus curiae* and in outlining the question presented for decision this Court stated that "appellant framed its complaint to call for a decision whether Pennsylvania or New York is entitled to the tax." *City Bank Farmers Trust Co.* v. *Schnader*, 293 U. S. 112, 117. The complaint in the instant case calls for similar treatment.

The Court below relied on the *Dorrance Estate* litigation as proof that no constitutional rights are violated by such multiple inheritance taxation as is threatened here. The various rulings in *Hill* v. *Martin*, 296 U. S. 393, and the earlier decisions in that Dorrance Estate litigation; do not suggest such a view by any of the courts concerned. The failure to prevent the violation of constitutional rights was due to the unfortunate pleadings and procedure chosen by the estate's representatives in presenting their case to the state courts so that the federal constitutional question was never considered. These state court suits in the Dorrance litigation were prior to the 1936 Amendment of the Interpleader Act. In the

instant case federal questions are squarely presented on the allegations of the bill. *First National Bank of Boston* v. *Maine*, 284 U. S. 312, and the principles of the prior cases which lead to that decision, require a holding by this court that the collection of an inheritance tax from the Hunt Estate by one state (based on domicile therein), for example California, if the final decision as to domicile is that it is in another state, for example Massachusetts, would be a denial of due process of law under the Fourteenth Amendment. The way to circumvent the Fourteenth Amendment as we understand the decision of the court below, is for each state court to decree domicile in its respective state. Such an opinion merely illuminates the already glaring need of one impartial forum to settle the issue of domicile. It may also lead to startling practical results. State inheritance taxation is increasing. Double domicile, so determined, may become multiple domicile. Already, a controversy involving quadruple domicile is pending before this court, *Texas* v. *Florida*, 300 U. S. 643, on the allegation by the state of Texas that if the four revenue seeking states collect their tax claims, the aggregate of the taxes will exceed the amount of the gross estate. The executor does not propose to try out the issue of domicile in several state courts and it should not be required to do so. Such trials might conceivably result in the absurdity of decrees by each state court that the decedent died domiciled in the other jurisdiction. Domicile can be in one state

only. If it is not in California, nothing the courts of that state can say will affect the true fact of domicile, or the estate's right to escape from California taxes assessed on a resident basis. Were the Court below correct in its view this Court would have found no denial of due process in *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. In that case the aggrieved party had a hearing in the state court which held that there were such local characteristics of the property in question that its transfer could be taxed in the state of the forum. A finding by a California court that Hunt was domiciled there would have the same significance. It would be mere lip service to the principle that intangibles are taxable at the domicile, and in substance provide the Hunt Estate with no more due process of law than was accorded the taxpayers in the *Minnesota* case by the state court. In the instant case an opportunity is provided to give practical effect to the principle established by the *Minnesota* opinion where it was said at page 212:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

CONCLUSION

The decree below should be reversed and the Judgment of the District Court affirmed.

Respectfully submitted,

MERRILL S. JUNE

BRADLEY B. GILMAN

Attorneys for Worcester County Trust Company, Executor u/w Robert H. Hunt

APPENDIX

A.

1936

49 Stat. 1096

n Act to amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, s amended, is amended by inserting at the end there- f the following:

"(26) Original jurisdiction of bills of interpleader, nd of bills in the nature of interpleader—Twenty- ixth.—(a) Of suits in equity begun by bills of inter- pleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or

1926

44 Stat. (Part 2) 46

CHAP. 273.—An Act Authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the district courts of the United States shall have original jurisdiction to entertain and determine suits in equity begun by bills of interpleader duly verified, filed by any casualty company, surety company, insurance company or association or fraternal or beneficial society, and averring that one or more

ossession money or property of the value of $500 or
ore, or having issued a note, bond, certificate, policy
f insurance, or other instrument of the value or
mount of $500 or more, or providing for the delivery
f payment or the loan of money or property of such
mount or value, or being under any obligation written
r unwritten to the amount of $500 or more, if

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations; and

persons who are bona fide claimants against such company, association, or society resides or reside within the territorial jurisdiction of said court; that such company, association, or society has in its custody or possession money or property of the value of $500 or more, or has issued a bond or a policy of insurance or certificate of membership providing for the payment of $500 or more to the obligee or obligees in such bond or as insurance, indemnity, or benefits to a beneficiary, beneficiaries, or the heirs, next of kin, legal representatives, or assignee of the person insured or member;

that two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property or the penalty of such bond, or to such insurance, indemnity, or benefits;

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"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical; but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district

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that such company, association, or society has deposited such money or property or has paid the amount of such bond or policy into the registry of the court, there to abide the judgment of the court.

SEC. 2. In all such cases if the policy or certificate is drawn payable to the estate of the insured and has not been assigned in accordance with the terms of the policy or certificate the district court of the district of the residence of the personal representative of the

court of the district in which one or more of such claimants resides or reside.

insured shall have jurisdiction of such suit. In case the policy or certificate has been assigned during the life of the insured in accordance with the terms of the policy or certificate, the district court of the district of the residence of the assignee or of his personal representative shall have jurisdiction. In case the policy or certificate is drawn payable to a beneficiary or beneficiaries and there has been no such assignment as aforesaid the jurisdiction shall be in the district court of the district in which the beneficiary or beneficiaries or their personal representatives reside. In case there are claimants of such money or property, or in case there are beneficiaries under any such bond or policy resident in more districts than one, then jurisdiction shall be in the district court in any district in which a beneficiary or the personal representative of a claimant or a deceased claimant or beneficiary resides.

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"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from

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Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any other Federal court on account of such money or property or on such bond or on such policy or certificate of membership until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

SEC. 3. Said court shall hear and determine the cause and shall discharge the complainant from further

further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U.S.C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of

liability; and shall make the injunction permanent and enter all such other orders and decrees as may be suitable and proper, and issue all such customary writs as may be necessary or convenient to carry out and enforce the same.

this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

Sec. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U.S.C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or

SEC. 4. Public Act numbered 346, Sixty-fourth Congress, entitled "An Act authorizing insurance companies and fraternal beneficiary societies to file bills of interpleader," approved February 22, 1917, and Public Act numbered 465, Sixty-eighth Congress, entitled "An Act to amend an Act entitled 'An Act authorizing insurance companies or associations and

proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

fraternal beneficiary societies to file bills of interpleader,' approved February 22, 1917," approved February 25, 1925, be and the same are hereby repealed. Said repeal shall not affect any act done or any right, accuring or accrued in any suit or proceeding had or commenced under said Acts hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Acts had not been repealed hereby.

Approved, May 8, 1926.

B.

Chapter 65 of the General Laws of Massachusetts provides in part:

> SEC. 1. Taxation of Legacies and Successions; Rates of Tax; Exemptions. — All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate or any interest therein and all tangible personal property within the commonwealth belonging to persons who are not inhabitants of the commonwealth except such an interest in such real estate as is represented by a mortgage or by a transferable certificate of participation or share of an association, partnership or trust, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt

from taxation, or for or upon trust for any charitable purposes to be carried out within the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rates fixed by the following table:*****

SEC. 6. Persons Liable for Taxes. — Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor, persons to whom beneficial interests shall accrue by survivorship and beneficiaries receiving additional property as provided in section twenty-seven, shall be liable for the taxes imposed by this chapter, with interest, until the same have been paid.

SEC. 9. Lien for Tax; Property Exempt; Discharge. — Property of which a decedent dies seized or possessed, subject to taxes as aforesaid, in whatever form of investment it may happen to be, and all property acquired in substitution therefor, shall be charged with a lien for all taxes and interest thereon which are or may become due on such property; but said lien shall not attach to any personal property after the same has been sold or disposed of for value by the executors, administrators or trustees, or to real estate after it has been conveyed by the executors, administrators or trustees under license or decree of the probate court, or to real estate which, during the life of the grantor, is conveyed by recorded or registered deed and transferred in possession and enjoyment by him to the grantee, in con-

templation of death. The lien charged by this chapter upon any real estate or separate parcel thereof may be discharged by the payment of all taxes due and to become due upon said real estate or separate parcel, or by an order or decree of the probate court discharging said lien and securing the payment to the commonwealth of the tax due or to become due by bond or deposit as hereinafter provided, or by transferring such lien to other real estate owned by the owner or owners of said real estate or separate parcel thereof.

C.

The Inheritance Tax Act of California, in force prior to the Amendment of June 24, 1935, provides in part as follows:

SEC. 1. (1) This act shall be known as the "Inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state or subject to the jurisdiction thereof; (provisions as to community property omitted)

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

SEC. 2. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

SEC. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided, however,* that where property is sold under and in accordance with the provisions of chapter seven, title eleven, part three of the Code of Civil Procedure the lien herein provided for shall be released from the property so sold and shall attach to the proceeds of such sale, and the person to whom the property passes or is transferred, except as herein in this section provided, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable

for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this act, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided*, that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; *and provided*, that no such lien shall cease within two years from the date of the passage of this act.

SEC. 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall

remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. *****

SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as

shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor, or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear, and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning

the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted *at the court house in the county where the court is held*, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such

proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of the said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court may make such order as to it may seem meet and proper in the premises; *provided*, that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

SEC. 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence

or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected: *provided*, that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expenses of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

D.

Chapters 296 and 333 of the California Laws of 1937 amended the Inheritance Tax Act so that it now contains the following:

"SEC. 3. All taxes imposed by this act or by any inheritance tax act of the State of California together with the interest thereon, until paid in full, shall be and remain a lien upon the interest of the decedent in the property which passes or is transferred, and the person to whom such interest in the property passes or is transferred, except as herein in this section provided, and all administrators, executors, and trustees of every estate so transferred or passed shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any bona fide purchaser, mortgagee, lessee, or beneficiary under a deed of trust."

"SEC. 7. (5) Notwithstanding any provisions hereof whereby final determination of taxability of the transfer of property or interests therein or income therefrom, is or may be deferred until the happening of certain contingencies or conditions, the State Controller may compromise, adjust and settle with the administrator, executor or trustee having charge of the estate or property in question, the taxability of the transfer of such property and of each and every interest therein, includ-

ing the income therefrom, whether such interests be absolute or qualified, perpetual or limited, present or future, vested or contingent or otherwise.

The inheritance tax appraiser, determining the inheritance tax payable, shall prepare a report in accordance with such settlement and if and when said report is confirmed by an order of the superior court having jurisdiction said order shall be a final determination of the matters covered thereby and the payment of said tax as fixed by said order shall be a complete discharge to such administrator, executor, or trustee with respect to such taxes."

"SEC. 7. (9) In all estates where a claim is made that the decedent was not domiciled in California at the time of his death the State Controller may, in his discretion, compromise the inheritance taxes payable in said estates, subject to the approval of the court.

The procedure shall conform to that set out in subdivision (5) of this section."

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1936.

No. 34

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

BRIEF FOR RESPONDENTS

IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1936.

No. 922.

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR, PETITIONER,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., RESPONDENTS.

BRIEF FOR RESPONDENTS

IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OPINIONS BELOW.

The opinions of the Circuit Court of Appeals (R. 43, 57) are not yet officially reported. The opinion of the United States District Court for the District of Massachusetts (R. 26) is reported in 14 F. Supp. 754.

JURISDICTION.

The petitioner has invoked the jurisdiction of this Court under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

STATEMENT.

This is an interpleader proceeding brought by the Worcester County Trust Company, as Executor, appointed in Massachusetts, under the will of Robert H. Hunt, who died June 11, 1935, and brought under sec. 24 (26) of the Judicial Code (U. S. C. Title 28, sec. 41 (26)), as amended January 20, 1936 (49 Stat. 1096) (for convenience here called the Interpleader Act). In ancillary proceedings in California the Security-First National Bank of Los Angeles was, at the request of your petitioner, appointed administrator with the will annexed of the estate of the decedent by the Superior Court in and for the County of Los Angeles (R. 2–3).

The decedent left real estate in California, sizeable bank deposits both in California and in Massachusetts, and considerable intangible property the bulk of which is in the possession of the Executor in Massachusetts.

The respondents named in the bill are Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, and your respondents in this Court.

The bill alleges, in addition to the facts set forth above, that the respondent tax officials of each State are seeking the benefit of the petitioner's fiduciary obligations as Executor to settle all inheritance taxes; that the Tax Commissioner of Massachusetts asserts that there is a succession tax due that State under the tax statutes based on his claim of domicile in Massachusetts; and that your respondents, tax officials of California, assert there is an inheritance tax due that State under its tax statutes based on their claim of domicile in California, and that the threatened collection of both taxes, each based upon an inconsistent claim of domi-

cile, will violate the Fourteenth Amendment of the Federal Constitution.

The bill prays, in substance, not only that the court determine the domicile of the decedent, but that the court determine the amount of the inheritance taxes and discharge the petitioner from further liability.

On the face of it there is an inheritance tax obligation to the State of California because there is real estate there. Such tax is to be paid to the county treasurer who collects it for the state.[1] (He was not made a party to this bill.) Such tax is payable by the legal representative of the estate in California, in this case the Security-First National Bank of Los Angeles, the administrator with the will annexed appointed by the California court. The Massachusetts executor is under no obligation to pay the California tax, and there is no effective lien for the California tax on the property in the possession of the executor. *Dewey* v. *Des Moines,* 173 U. S. 193; *In Re Martin's Estate,* 240 N. Y. Supp. 293, affd. 255 N. Y. 359; *Goodrich* v. *Rochester etc. Trust Co.,* 160 N. Y. Supp. 293, 173 App. Div. 577; *People* v. *Union Trust Company,* 255 Ill. 168; *Colorado* v. *Harbeck,* 232 N. Y. 71. Whether there is also an inheritance tax obligation to Massachusetts depends upon whether or not the decedent was domiciled there at the time of his death. So far as California is concerned, any question as to the domicile of the decedent can affect only the amount of the tax obligation and not the existence of the obligation.

The District Court entered an ex parte order temporarily restraining the tax officials of each state from

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[1] The pertinent provisions of the Inheritance Tax Act of California (Act of 1921 as amended 1923, 1925, 1927 and 1929) are set out in the Appendix to this Brief. See sec. 19 of that Act.

taking steps to assess, determine or collect inheritance taxes due from the Hunt Estate.

Your respondents, appearing specially only for the purpose of objecting to the jurisdiction of the Court over them, moved to dismiss the bill and to dissolve the restraining order. The Massachusetts Tax Commissioner appeared generally and filed an answer to the merits.

Your respondents' motions were thereafter denied (R. 23, 34), and the District Court entered an order (R. 24) temporarily enjoining each of the respondents to the bill "from taking any action to fix or assess" any estate or inheritance tax "and from taking any action to collect any" such tax from the petitioner, or from the Security-First National Bank of Los Angeles as administrator with the will annexed.

As soon as your respondents' appeal[1] was docketed in the Circuit Court of Appeals, they petitioned this Court for a writ of certiorari. This petition was denied on October 12, 1936. (*Riley, Controller, et al.* v. *Worcester County Trust Co., Executor* (No. 215, October Term 1936)). The case was thereafter argued before the Circuit Court of Appeals, and on March 15, 1937 that Court (Morton, J., dissenting) reversed the District Court (see opinion at R. 43) and entered a final decree by which it vacated the order of the District Court granting a temporary injunction and remanded the case to that court with direction to dismiss the bill for want of jurisdiction (R. 59).

[1] The Massachusetts Tax Commissioner declined to join in the appeal

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statute involved is Par. 26 of Section 24 of the Judicial Code as amended by the Act of January 20, 1936 (49 Stat. 1096), and is set out in full at pages 7–9 of the Record. The petitioner has excerpted and set forth at pages 5–6 of the Petition most of the material parts, but there omitted one of the most important provisions, to wit:

> "(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; . . ."

Article III of the Constitution provides in part:

> "Section 2, Clause 1. The judicial Power shall extend . . . to controversies between two or more States;—between a State and Citizens of another State; . . ."
>
> Section 2, Clause 2.
>
> "In all Cases . . . in which a State shall be Party, the Supreme Court shall have original Jurisdiction. . . ."

The Eleventh Amendment is as follows:

> "The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State."

ARGUMENT.

AN EXPLANATION AS TO THE METHOD OF FIXING THE CALIFORNIA TAX, AND AS TO THE FUNCTIONS OF THE CALIFORNIA RESPONDENTS IN THIS CASE.

A brief outline of the method of fixing the California tax and as to the functions of the California respondents is important for a proper interpretation of the allegations of the bill, and for a proper consideration of this case. Copies of the pertinent California statutes are set forth in the Appendix to this Brief.

At the time of the probate of will, the court having jurisdiction over the probate and the estate appoints an Inheritance Tax Appraiser[1] for that estate. He has the powers of a referee and is merely an officer or appointee of the court to examine into the facts and make his determination as to the amount of the tax and the facts bearing thereon, and report the same to the court (Sec. 16 (1)). He is an essential part of the court in every such tax proceeding. See *Estate of Haskins,* 170 Cal. 267, for a full explanation as to the position and function of the Inheritance Tax Appraiser.

Upon the filing of the report the court gives notice to the State Controller and all other parties interested and they have an opportunity to file objections. If objections are filed, the matter is set down for hearing before the court, at which hearing the report is treated merely as prima facie correct. (Sec. 16 (2).) After hearing the court makes its order fixing the tax and this order has the force and effect of a judgment in a civil action, with

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[1] Each county has one or more Inheritance Tax Appraisers who are appointed as such by the State Controller, just as Masters in Chancery are appointed by the Governor in Massachusetts, their duties being to act in a particular case when appointed by the court in such case. (Sec. 14.)

all rights of appeal, etc. (Sec. 18.) It is then the duty of the County Treasurer to collect the tax and pay the same to the State Treasurer. (Sec. 19.)

It thus appears that the entire matter of determining the tax liability of an estate is a court proceeding which begins (and began in the case at bar) with the appointment by the court of the Inheritance Tax Appraiser (the respondent Sproul in the present case). Until the court makes its order, after the report is filed and the hearing on it had, there can be no determination, in the sense of a legal determination, as to the decedent's domicile or as to the tax liability of the estate. Such a determination can come only by the court in a judicial proceeding which, in the case of the present estate, is and was at the time the interpleader bill was filed actually pending in the California court.

The Controller maintains under his authority and direction an inheritance tax department. (Political Code, Sec. 445.) In a case, like the present one, where there are probate proceedings in California, the Controller first comes into the tax proceeding when he is given notice by the court of the filing of the Inheritance Tax Appraiser's report. The inheritance tax attorney is merely the official attorney for the Controller, in charge of the legal work.

In the light of such a situation the allegation that the California respondents have each determined that Hunt died domiciled in California merely amounts to an assertion that such is the conclusion each has come to in his own mind, and not that there has been any legal or official determination of the tax liability of the estate to the State of California.

In view of the situation in California it further becomes apparent that the injunction against the In-

heritance Tax Appraiser is clearly not within the scope of any District Court's jurisdiction. An officer of a state court may not be enjoined by a federal court from performing his duties. Judicial Code, sec. 265 (U. S. C. Title 28, sec. 279); *Hill* v. *Martin,* 296 U. S. 393, 403; *Lion Bonding Co.* v. *Karatz* (the *Hertz* case) 262 U. S. 77, 87–90. The Interpleader Act creates no exception as to procedings by state courts or by their officers. It provides only that "claimants" may be enjoined from "instituting or prosecuting" proceedings. This injunction provision is not materially different now from what it was when it first appeared in the 1926 Amendment (44 Stat. 416) of that Act, 10 years before the present (1936) amendment, see *Lowther* v. *New York Life Ins. Co.,* 278 Fed. 405 (3rd C. C. A.).

THERE IS NO PRESSING NEED OF A DECISION BY THIS COURT AT THIS TIME.

The need of decision by this Court is by no means as pressing as it was when the previous petition for certiorari was filed in this cause by your present respondents before the decision of the Circuit Court of Appeals. With that decision* as the only precedent there was danger that it might be followed by other District Courts in similar cases with the result that the several States would be likely to be seriously hampered in the orderly administration of their tax laws and the prompt collection of their revenues. And in fact that is just what has happened.

If certiorari is granted, the probable result will be that District Courts will continue in force or issue restraining orders or injunctions, as the District Court did in the case at bar, enjoining the tax officials of the several States involved "from taking any action to fix

* of District Court.

or assess'' any inheritance or estate tax, and from taking any action to collect such tax. In California such an injunction, coming as it does before the Inheritance Tax Appraiser makes his report, prevents even any legal or official determination being made as to the decedent's domicile. He is halted in the performance of his functions as an officer of the court. And this is done ex parte on the allegations of the Executor or someone on behalf of the Executor. The tax officials cannot contest such allegations without appearing generally and submitting to the jurisdiction of the court.

Furthermore, *non constat,* that the State court, after hearing all the parties in interest, would determine that the decedent was domiciled in the State.[1] The estate will have a full opportunity to present the evidence and be heard by the court as to the fact of domicile. It is not to be assumed that the court will decide against the evidence, but rather that its finding will be warranted by the evidence. See *Trowbridge's Estate,* 266 N. Y. 283. A State should not be subjected to having the administration of its revenue law interfered with merely because an executor happens to have a fear that the court of that State, charged with the duty of determining, after hearing the parties, the fact as to the decedent's domicile, may reach a determination of fact which would not be warranted by the evidence. And surely if the finding were warranted by the evidence the executor could have no grounds to complain.

If certiorari is denied, it is much more likely, we submit, that the decision of the Circuit Court of Appeals in the case at bar will be looked to as the sound precedent

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[1] In the case at bar, however, the California respondents have every confidence that the evidence will warrant a finding that the decedent was domiciled in California and that the court would so find.

by the several District Courts where similar interpleader suits are now pending or may be brought, and the present intolerable situation of the several States will probably be immediately relieved. They will undoubtedly recognize as pointed out in the Petition (P. 10), that at the time of the decision of the District Court the case had not received the thorough attention which has now been disposed upon it. We submit that, contrary to the suggestion of the petitioner, it is most unlikely that a conflicting decision would be made by any other Circuit Court of Appeals. The five judges referred to by the petitioner as having taken widely divergent views, obviously are the following: Judge Sweeney, who issued the temporary restraining order ex parte on the filing of the bill (R. 12). Judge Brewster, whose opinion appears at R. 26. While the case was argued and briefed before him, nevertheless several of the more important reasons why the court did not have jurisdiction were not then advanced, and also this Court's denial of certiorari in the *Dorrance* case (298 U. S. 678) did not occur until after his decision. The other three were the Judges of the Circuit Court of Appeals, and the dissenting opinion is dealt with later in this brief.

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS EMINENTLY SOUND.

The conclusion of the Circuit Court of Appeals that the District Court had no jurisdiction over the California respondents, and its line of reasoning in reaching that conclusion is so obviously sound that it is difficult to conceive that it will not be followed by the district courts in similar cases that may be pending or be brought in other Circuits. It is equally unlikely that

any other Circuit Court of Appeals will reach a conflicting conclusion.

The executor grounds its claim of jurisdiction over the California respondents solely on the Interpleader Act. Neither from the language of that Act nor from a study of its history can the slightest intimation be gathered that Congress ever intended or contemplated that the Act should be construed to authorize the impleading of the claimants to inheritance tax obligations.[1]

Such obligations are obligations to the State, and the real claimants thereto must of necessity be the States themselves or their representatives or agents. The purpose of interpleader is to enable an obligor to bring into one court the parties claiming to be entitled to the obligation and there hear and determine the cause and *discharge* the complainant from further liability. In order to have interpleader apply to such tax obligations it is obvious that the court must have or be given jurisdiction over the real parties in interest, *i. e.* the parties entitled to such tax obligations, which are the States themselves.

It is clear, therefore, that Congress could not have made the Interpleader Act apply to such tax obligations, even had it so wished. An interpleader suit is a suit against the parties claiming to be entitled to the obligation, and the Eleventh Amendment expressly prohibits the courts of the United States from entertaining a suit against a State by a citizen of another State.

Furthermore, to construe the Interpleader Act as authorizing the district courts to entertain such interpleader suits would violate a well-established principle

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[1] See 74th Cong. 1st Sess. Senate Report No. 558 to accompany S. 1277. See also House Report No. 1437 as to the same bill.

which this Court has many, many times reiterated and followed,—the principle that a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts on that score. *Missouri Pacific R. R.* v. *Boone,* 270 U. S. 466, 471–2; *Ashwander* v. *Tenn. Valley Authority,* 297 U. S. 288; *Lewellyn* v. *Frick,* 268 U. S. 238, 251; *Interstate Commerce Commission* v. *Oregon Washington R. R.,* 288 U. S. 14; *Panama R. R.* v. *Johnston,* 264 U. S. 375, 390. Particularly is this so when the Act, if read according to its terms, presents no difficulty. *Russian Fleet* v. *United States,* 282 U. S. 481, 492.

At the National Conference of the National Tax Association in 1935 the Committee of that Association appointed at the conference in 1934 to study and report on the problem of double domicile in death taxation, made its report in which, in discussing the various suggested solutions, pointed out that there would be grave doubt as to the power of Congress to give to the District Courts jurisdiction over such disputed domicile cases. It said:

> "It has been suggested that Congress be induced to pass legislation specifically enlarging the jurisdiction of Federal District Courts to include such cases of disputed domicile in tax matters. There is grave doubt whether the Federal Constitution confers upon the Federal Government the power to pass legislation under which two or more states may be joined in a proceeding in a Federal court for the purpose of determining the domicile of a decedent. **Each State involved would say that when it subscribed to the Federal Constitution it did not surrender to the Federal Government its power to say whether a decedent was domiciled within its borders;**

> that this is purely a matter for state determination except that, if a state commits a wrong for which redress may be had under the Federal Constitution, the remedy is by action of the executor against the offending state by certiorari from the highest state court to the United States Supreme Court."

Furthermore, that Committee rejected a suggestion that the States agree, either by legislation or otherwise, that if the executor should be able to take the matter into a Federal Court, the States would be bound by the decision arrived at. As the Committee put it, it "opens up possibilities that might not be desirable." It also referred to the "recurring difficulty as to whether all of the States could be made parties, and if they were not parties, they might not feel that they ought to be bound by the litigation."

When read according to its terms the Interpleader Act presents no difficulty. It expressly provides not only that the adverse claimants must be citizens of different states, which eliminates cases where states are the claimants, for a state is not such a citizen, *Minnesota* v. *Northern Securities Co.*, 194 U. S. 48, 63; *Postal Telegraph Cable Co.* v. *Alabama*, 155 U. S. 482, 487; *Alabama* v. *Wolfe*, 18 Fed. 836, 838, but it further requires that the adverse claimants be those who are "claiming to be entitled" to the obligation.

As we have already shown, none of the California respondents in the case at bar are even alleged to be "claiming to be entitled" to the obligation. The Inheritance Tax Appraiser is a referee appointed by the California court to make a finding and report such a finding to the court and he has been enjoined from proceeding with his investigations and from making his

report. The Controller is the representative of the State who is charged with the duty of representing and acting for the State in the proceeding before the California court and comes into that proceeding only *after* notice which is yet to be issued by the Court *after* the Inheritance Tax Appraiser's report is filed. The Inheritance Tax Attorney is the person who acts as attorney for the Controller in such court proceeding.

The allegation that these California respondents "have determined" that the decedent was domiciled in California is certainly not an allegation that they are "claiming to be entitled" to the tax obligation. The allegation that they "are asserting and have threatened and are about to assess and attempt to collect" the California inheritance tax also is obviously not an allegation that they are "claiming to be entitled" to such obligation. Such an allegation, read as it must be in the light of the California statutes and law, amounts to nothing more than an assertion that they are acting and threatening to act in the performance of their respective duties in the tax proceeding which is pending before the California court wherein eventually that court is to enter its judgment fixing and determining the amount of the tax, which judgment it will then be the duty of the County Treasurer (*not* a party respondent in this case) to collect and pay into the State Treasury. None of the California respondents are "claiming to be entitled" to the tax, nor is it conceivable that they ever would be. They are merely claiming that the *State of California* is entitled to the tax.

The fundamental fallacy in the executor's line of reasoning is that, notwithstanding it states that its bill is brought under the provisions of the Interpleader Act, it promptly either forgets, or deliberately shuts its eyes

to, the requirement that the court must have before it the real parties in interest, *i. e.* the parties who are "claiming to be entitled" to the obligation which is the subject matter of the bill. It also forgets that it is absolutely necessary that the real parties in interest entitled to the obligation be the party claimants; otherwise the court could not determine the cause so as to bind the parties entitled to the obligation, and therefore could not discharge the executor from its liability for that obligation.

In its endeavor to satisfy the requirements of the Act that the adverse claimants be citizens of different states, *i. e.* individuals, and not the states themselves, the executor invokes the principle laid down in a line of cases in this Court such as *Ex parte Young,* 209 U. S. 123; *City Bank* v. *Schrader,* 291 U. S. 24; and *Sterling* v. *Constantin,* 287 U. S. 378, to the effect that a state official who attempts to enforce the collection of an unconstitutional tax may be enjoined by a Federal court from so doing. The theory on which such a principle is based is that such a state official is considered as "stripped of his official or representative character". *Ex Parte Young,* 209 U. S. 123, 160.

Under such a theory, however, these alleged claimants cannot be "claiming to be entitled" to the tax obligation. Nor in fact do they so claim. They claim that the State is entitled to it. Having stripped them of their representative character in order to qualify them as "citizens" the *executor cannot in the same breath make out that they are the real parties in interest to the controversy as to domicile, for they would not be the representatives of the State, the party entitled to the obligation.*

What the executor is really attempting by this suit is

to read into the Interpleader Act sufficient new words and read out of it sufficient of its present words so that what would be left would be an act purporting to give to each District Court a nation-wide jurisdiction to enjoin tax officials from levying or threatening to levy unconstitutional inheritance taxes. Such an act, however, would not be an interpleader act. It would be an act to extend the jurisdiction of the district courts in another branch of equity jurisprudence,—suits to enjoin threatened wrongs.

But the allegations of its bill are not even sufficient to bring it within such a rewritten act. The bill does not allege that the decedent was not domiciled in California, nor that a tax based upon a determination of a California domicile would be unconstitutional. It makes no allegation that the determination by the California respondents that the decedent was domiciled in California was made arbitrarily and without substantial evidence to support it. The bill therefore does not even allege any facts sufficient, if true, to show a violation of the Fourteenth Amendment by the California respondents.

The allegations that they have determined that the decedent was domiciled in California and intend to proceed accordingly, and that the Massachusetts tax commissioner has determined that the decedent was domiciled in Massachusetts and intends to proceed accordingly do not warrant the conclusion that one or the other of them must be threatening a violation of the Fourteenth Amendment. The Fourteenth Amendment does not assure uniformity of judicial decisions or immunity from judicial error. *Milwaukee Electric Ry. & Lt. Co.* v. *Wisconsin,* 252 U. S. 100, 106; *Central Land Co.* v. *Laidley,* 159 U. S. 103; *Tracy* v. *Ginzberg,* 205 U. S. 170.

This defect in the bill, even under the executor's theory as to the scope of the Interpleader Act, was convincingly pointed out by the Circuit Court of Appeals (R. 52–3). Whether or not that court was correct in its conclusion as to the reasons why this Court denied certiorari in *Dorrance* v. *Martin,* 298 U.S. 678, is immaterial, and would not furnish any reason for granting certiorari in the case at bar. That conclusion was not the *sine qua non* of the Circuit Court of Appeal's decision that the executor's bill did not allege a violation of the Fourteenth Amendment.

Another reason why the Interpleader Act cannot be construed to apply in the present situation, where the controversy sought to be settled is as to which of two or more States is entitled to impose an inheritance tax upon the intangible property of a decedent's estate, is that such a controversy is of necessity a controversy between the States themselves, and hinges upon a determination of the fact of domicile. This Court is the only court which has jurisdiction in cases of controversies between States. That being so, it must follow that the District Court could not have jurisdiction of such a controversy. In granting leave recently to the State of Texas to file its amended bill of complaint against the State of Florida et al. to have this Court settle such a controversy as to the domicile of the late Colonel Green for the purpose of settling the question as to which of the four States involved had the right to impose such a tax upon the intangible personal property, the Court must have done so on the principle that such a controversy was a controversy between the States themselves.

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS IN NO WAY CONTRARY TO THE SPIRIT OR DECISION OF FIRST NATIONAL BANK v. MAINE, 284 U. S. 312.

The only question in that case and in *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204 was whether a State could impose an inheritance tax on intangibles of a decedent who admittedly was domiciled in *another* State. This Court was there concerned with a question of multiple taxation "following misapplication of some legal fiction or conflicting theories concerning the sovereign's right to exact contribution." (*Minnesota* case at p. 212.) In the present case neither State is threatening to misapply any legal fiction or conflicting theory. Each State is proceeding on the same theory, *i. e.,* that intangibles are taxable at the domicile. The only conflict alleged is a conflict as to a question of fact,—the jurisdictional fact—the place of the domicile. This Court has many times recognized that each State may examine into and determine for itself the fact of domicile, where that fact is a jurisdictional fact. *Iowa* v. *Slimmer,* 248 U. S. 115; *Olmstead* v. *Olmstead,* 216 U. S. 386; *Chase National Bank* v. *Norwalk,* 291 U. S. 431, 440–1; *Thormann* v. *Frame,* 176 U. S. 350; *Overby* v. *Gordon,* 177 U. S. 214; *Burbank* v. *Ernst,* 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394.

THE MINORITY OPINION IS CLEARLY UNSOUND.

The minority opinion of Judge Morton in the Circuit Court of Appeals proceeds not only on an erroneous interpretation of the allegations of the bill, but also on complete misconception of the terms and purpose of the Interpleader Act.

He says (R. 57) that the bill alleges in substance "that the claim made by each State official is wholly unwarranted in law, is without legal justification under any statute, and violates the XIV Amendment". All that the bill does allege is that "the threatened collection of both the California and Massachusetts taxes, each based on an inconsistent claim of domicile, will deprive your complainant of property without due process of law" etc. Such an allegation is far from an allegation that *each* claim is unwarranted in law. It is rather an allegation merely that one or the other claim is unwarranted in law.

Judge Morton then says (R. 58) that "the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed". Any proceeding in which such a result followed would certainly not be any known kind of an interpleader proceeding or a proceeding such as is provided for by the Interpleader Act, for the party bringing the bill could not be discharged from further liability with respect to his obligation. It is not interpleader to merely determine which of two parties has a claim, and then *dismiss the proceeding as to the party found to have the claim!* Such a proceeding is unknown in the law so far as we know. The nearest analogy is a proceeding under a declaratory judgment statute.

Judge Morton further states that the Interpleader

Act "is designed to" cover the situation where there are conflicting claims between states as to the domicile of a decedent. Such a statement, if intended to mean that Congress intended that Act to apply in such a case, is entirely without foundation. There is not a scintilla of evidence in the history of the Act indicating that Congress ever had any kind of a tax situation in mind.

In suggesting that "doubt should be resolved in favor of jurisdiction under this statute", Judge Morton disregards the rule (see p. 12, *supra*) that statutes should be construed so as to avoid doubt as to their constitutionality. No suggestion of expediency, or argument *ab inconvenienti,* should be sufficient to warrant a holding that the conflicting inheritance tax claims of two states can be impleaded in a District Court, especially in the face of Art. III, Sec. 2, clause 2, and the Eleventh Amendment. See *Baker* v. *Baker Eccles & Co.,* 242 U. S. 394, 404.

IN CONCLUSION.

It is respectfully submitted that this case is one in which the want of authority in the District Court to entertain the bill is so clear, and the fact that the proceeding is in essence a suit against the State of California without its consent is so evident, that not only that State but all the other States who are now being, or are likely to be, prevented by injunctions from proceeding in the orderly administration of their revenue laws should not be subjected to any further continuance of such delays. See *Ex parte State of New York, No. 1,* 256 U. S. 490.

"Considerations of convenience open no avenue of escape from" the explicit limitations of the Eleventh Amendment on the judicial power of the Federal courts.

Missouri v. *Fiske,* 290 U. S. 18, 25–6. This limitation cannot be avoided by bringing the suit against the officers or agents of the State in cases where the State is "the only real party against which alone in fact the relief is asked, and against which the judgment or decree effectively operates." See *In re Ayers,* 123 U. S. 443, 505–6, and *Fitts* v. *McGhee,* 172 U. S., 516, both cited with approval in *Missouri* v. *Fiske,* 290 U. S. 18, 27.

Wherefore your Respondents submit that the petition for a writ of certiorari be denied.

Respectfully submitted,

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APPENDIX.

CALIFORNIA POLITICAL CODE.

"*Section 445. Inheritance tax department.* The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state.

"*Duties.* Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys, and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for the use of inheritance tax appraisers or other use as the controller may direct.

"*Attorneys.* In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney whose office shall be in the City of Sacramento, five assistant tax attorneys, two of whom shall have their offices in the City of Los Angeles, two of whom shall have their offices in the City and County of San Francisco, and one of whom shall have his office in the City of Sacramento. Said attorneys shall be civil executive officers and shall be admitted and licensed to practice before the supreme court of this state. The in-

heritance tax attorney shall, under the authority and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with said department and shall perform such other duties as the controller may direct.

"*Services.* Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct."

"*Salaries. . . .*" (Omitted because not material.)

"*Expenses. . . .*" (Omitted because not material.)

INHERITANCE TAX ACT OF CALIFORNIA.

ACT OF 1921 AS AMENDED 1923, 1925, 1927 AND 1929.

"SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of the inheritance tax moneys in the hands of the treasurer of the county, in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; *provided,* that any claim for any such services or expenditure, must before payment, first receive the approval of the state con-

troller; *and provided, further,* that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and, in addition thereto the court shall dismiss him from such service.

"SEC. 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other; *provided,* that the superior court having acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said probate proceedings all questions in relation to any tax arising under the provisions of this act: (*a*) Upon property passing

in said probate proceedings. (*b*) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

"SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the

purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or if such executor or administrator, or other person under oath concerning such property and the value thereof and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or

other testimony or information taken before him, or submitted to him.

"(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing **notice to be posted at the court house in the county where the court is held,** and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file obpections in writing to said report. Thereupon **the clerk of the** said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall **give notice of said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser.** Upon the hearing of said objections, said court, may make such order as to it may seem meet and proper in the premises; **provided, that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.**

"(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the

affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

"SEC. 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor, and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof."

"SEC. 18. The orders, decrees and judgments fixing

tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

"SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor;"

"SEC. 22. All taxes levied and collected under this act, up to the amount of two hundred fifty thousand dollars annually, shall be paid into the treasury of the state, for the uses of the state school fund, and all taxes levied and collected in excess of two hundred fifty thousand dollars annually shall be paid into the state treasury to the credit of the general fund thereof."

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents,

IN THE MATTER OF THE MOTION OF THE PETITIONER TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, AS A PARTY RESPONDENT.

MEMORANDUM OF HARRY B. RILEY, CONTROLLER, IN OPPOSITION.

HARRY B. RILEY,
Individually and as Controller of the State of California, appearing specially, only, as aforesaid, by his Attorneys,
NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER.

L. H. LANE, Law Printer, 221 High Street, Boston.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR, PETITIONER,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA ET AL., RESPONDENTS.

IN THE MATTER OF THE MOTION OF THE PETITIONER TO SUBSTITUTE HARRY B. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, AS A PARTY RESPONDENT.

MEMORANDUM OF HARRY B. RILEY, CONTROLLER, IN OPPOSITION.

Now comes Harry B. Riley, Controller of the State of California, appearing specially only, but not generally, and without submitting himself generally to the jurisdiction of the court, but for the sole purpose of objecting to the jurisdiction of the court over him or to grant the petitioner's motion to substitute him as a party respondent in the above entitled cause, and submits the following memorandum in opposition to such motion. (All italics in this Memorandum ~~is~~ are ours.)

The executor's Memorandum in support of its motion states that its interpleader bill alleged threatened collection of both Massachusetts and California inheritance

taxes, each based upon inconsistent claims of domicile. The allegation as to the California respondents was,—

> ". . . that the respondents, Ray L. Riley, comptroller as aforesaid, W. H. H. Gentry, inheritance tax attorney as aforesaid, and Frank P. Sproul, inheritance tax appraiser as aforesaid, have each severally or as agent one for another, individually or by their agent or agents, *determined that the said Robert H. Hunt died domiciled* in California and *are asserting* and have *threatened* and are *about to assess and attempt to collect* from your complainant and the estate in its charge" such taxes "based upon said domicile or determination of domicile . . ." (R. 4); and that "the threatened collection of both the California and the Massachusetts taxes, each based upon an inconsistent claim of domicile, will deprive your complainant and the Estate in its charge of property without due process of law . . ." (R. 5).

This allegation must, however, be read in the light of the California statutes and law as to the functions and powers of these officials. As pointed out in the California respondents' Brief in Opposition to the Petition for Certiorari (Resp. Brief, pp. 6–8) it is no part of the functions or powers of any of these officials to determine the decedent's domicile or to assess or collect the tax.

The entire matter of determining and fixing the tax liability of the estate is a court proceeding which began, in the Hunt estate, with the appointment of Sproul as Inheritance Tax Appraiser* by the Superior Court in

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* Each county has one or more Inheritance Tax Appraisers who are appointed as such by the State Controller, just as Masters in Chancery are appointed by the Governor in Massachusetts, their duties being to act in a particular case when appointed by the court in such case. (Sec. 14.)

which the probate proceedings were had. His only function is to act as an officer of the court with the powers of a referee and examine into the facts and make his determination as to the amount of the tax. After this report is filed in the court the Controller and all other persons interested are notified, and if any objections are filed the matter is set down for hearing before the court, at which the report is treated as prima facie evidence, like an auditor's report. The Inheritance Tax Attorney is merely the official attorney for the Controller and would represent the Controller at such hearing. After hearing, the court makes its order fixing the tax, which order has the force and effect of a judgment in a civil action with all rights of appeal. When the court's judgment has become final, it is then the duty of the County Treasurer to collect the tax and pay the same to the State Treasurer. (The pertinent California statutes are set forth in the Appendix to the California Respondents' Brief in Opposition to the Petition for Certiorari.)

It thus appears that the allegation that the California respondents have determined that Hunt died domiciled in California amounts to nothing more than an assertion that they have come to that conclusion in their own mind, and not that there has been any official determination of domicile; and that the allegation that they are threatening and are about to assess and attempt to collect the tax amounts to nothing more than an assertion that in the pending court proceedings they will, when the time comes, contend that the *court* should determine the domicile to be in California and that the *court* should fix the tax accordingly. At no time will any of them

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After having been so appointed by the court, obviously such Inheritance Tax Appraiser is no longer under the control or direction of the State Controller so far as that case is concerned, but is an officer of the court for the purpose of that case.

have anything to do with the collection of the tax pursuant to the court's judgment.

This examination and analysis of the California law, in the light of which the petitioner's allegations must be read, are important in the consideration of the petitioner's present motion to substitute the new Controller. It makes it clear that, in seeking to have the new Controller now substituted in the place of his enjoined predecessor in office, Ray L. Riley, the executor is seeking the action of this Court to bring under injunction a state officer whose function in connection with the present tax proceeding in California will not begin until some time in the future after the Inheritance Tax Appraiser, now under injunction, has filed his report in the California court, and whose only function then will be to represent the State in pressing before that court the State's contentions with respect to domicile* and the amount of the tax liability; and that it is seeking to have this Court further interfere to render a state officer unable to perform his statutory duty, when the time for its performance shall arrive, in a tax determinative or assessment proceeding in which the executor will be entitled to a full and fair hearing. It is not a mere formality.

This Court has many times said that due process is satisfied if its usual requisites, the right to a full and fair hearing of its claim, are present at any stage of a tax proceeding. In *Pittsburgh etc. Ry. Co.* v. *Board of Public Works,* 172 U. S. 32, 45, this Court said that "in matters of taxation, it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal, or before a board of assess-

* It is to be borne in mind, however, that the interpleader bill contains no allegation that the decedent was not domiciled in California, or that he was domiciled in Massachusetts or elsewhere than California. As we understand the theory of the executor's suit is that it is taking no position on that point so far as this suit is concerned.

ment, at some stage of the proceedings." It is immaterial, therefore, for our present purpose, whether the California court be considered to be acting as a judicial tribunal or as an administrative agency in performing its function of fixing or assessing the tax. See *DePauw University* v. *Brunk*, 53 F. (2) 647; affirmed *per curiam*, 285 U. S. 527.

It is well settled that this Court will not interfere to stop officers of this kind, particularly in tax proceedings, from performing their statutory duty for fear they may perform it wrongfully. *First National Bank* v. *Albright*, 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Commission*, 236 U. S. 699. A fortiori a state officer whose only function will be to press the contentions of the State before that assessing body sometime in the future should not be enjoined.

As in the *Dalton* case, it is not contended by the executor that the California tax statute is unconstitutional, but it is alleged only that it is feared that it might be enforced in such a way as to contravene the Fourteenth Amendment. If such a thing happened, it could take an appeal to the upper courts of the state, and could then take the case to this Court on a proper showing. There is nothing to indicate that it would not have a fair hearing or that the California respondents would attempt to enforce the law against it in an oppressive manner.

It is also well settled that the federal court has no jurisdiction to enjoin the collection of state taxes alleged to violate the Federal Constitution or laws when the plaintiff has not exhausted the state administrative remedies. *First National Bank* v. *Weld County*, 264 U. S. 450; *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265.

So far we have been answering the petitioner in the same vein in which it has presented and argued its motion, *i. e.*, as if it were merely an injunction suit,—as

if it were a bill to enjoin the threatened collection of a tax alleged to be unconstitutional. As a matter of fact, *it is an entirely different kind of a proceeding and is governed by entirely different equitable principles.* Failure to note and give due consideration to this fact has resulted in great confusion of thought on the part of the executor and of the District Court.

The executor's suit is based solely on the Federal Interpleader Act (so-called) (sec. 24 (26) of the Judicial Code, (28 U. S. Code § 41 (26)) as amended January 20, 1936 (49 Stat. 1096). *It is an interpleader suit.* It is a bill to determine which of two parties is entitled to an obligation. The obligation is the inheritance tax obligation of the decedent's estate to the state. The petitioner is in doubt as to which of two states is entitled to that obligation. It seeks by this interpleader suit to have the District Court resolve that doubt and "*discharge* the complainant from further liability". (See sub-paragraph (d) of the Act. R. 8.)

The purpose of interpleader is not to prevent the doing of an unauthorized act, but to require an authorized act to be done in one court rather than in another.

It would seem perfectly clear that the states were indispensable parties defendant in such an interpleader suit. It is not only obvious, but the Act expressly provides, that the parties interpleaded must be the adverse claimants who are "claiming to be entitled to" the obligation. The inheritance tax obligation, at least in California, and in most other states, is an obligation to the state, and only the state itself can be entitled to that obligation. As the sole purpose of interpleader is to enable the plaintiff by one suit and judgment to be discharged of an obligation, and to bring before the court the several parties who *claim to be entitled* to that obligation, it follows that the bill must name as respondents

each party who would *be entitled* to that obligation if his or its contention prevailed.

In the case at bar the principal issue sought to be raised by the executor by its interpleader bill is the issue of fact as to the decedent's domicile. If the domicile was in California, the State of California is entitled to the tax obligation with respect to the intangible personal property. If the domicile was in Massachusetts, that State is entitled to that obligation. Obviously, then, the executor must interplead the two states in order to enable the court to discharge it from all further liability for its obligation.

Recognizing that it could not interplead the states themselves (Eleventh Amendment), or the tax officials as the agents and representatives of their respective states (*Missouri* v. *Fiske,* 290 U. S. 18; *Ex parte State of New York No. 1,* 256 U. S. 490), the executor has, up to now, been maintaining that its suit is against the named officials individually and not in their official capacity, that because of their alleged threats they were "stripped of (their) official or representative character" (*Ex parte Young,* 209 U. S. 123, 160), and that therefore they could be interpleaded as individuals and not as state officials representing their states. (See page 12 of its Petition for Certiorari.)

At the bottom of page 3 of its Memorandum the executor states that the new Controller's position "is an interesting one". Was this made for the purpose of diverting attention from the fact that the executor's position is the *really* interesting one? Having heretofore blown hot, the executor seems to be now blowing cold. It now seeks to substitute the new Controller by attempting to invoke sec. 780 of the U. S. Code, a statute designed to authorize substitution only where the pending suit is really against the office rather than the individual man. The executor further emphasizes its

new and inconsistent position by arguing that "the substitution should be a mere formality as in the innumerable cases where a new Federal Commissioner of Internal Revenue has been substituted as a party respondent in Federal tax suits" (Memo. 6) (which are plainly cases where the pending suit is against the office of Commissioner and not against the individual man); and again by arguing that "the new incumbent of the office is the real party in interest" and that "such cases (*i. e.* where the new Commissioner is substituted) are to be contrasted with the suits against internal revenue collectors for refund of taxes", where "no substitution of a succçessor collector is proper". (Memo. 6.)

It further emphasizes its new position by arguing that "the new Controller has the same interest as his predecessor in claiming the tax and attempting its collection". In view of the Controller's very limited functions in tax proceedings in California it is apparent that the executor cannot mean to say that the new Controller is "claiming the tax" in the sense of claiming *to be entitled* individually to the tax, or that it was to be paid to him as a tax collector. But as one must be claiming "to be entitled" to the tax obligation in order to qualify him as an "adverse claimant" subject to the Interpleader Act, it follows that the executor must have used the words "claiming the tax" in the sense of claiming as a State official or representative that the State is entitled to the tax, and that he must have used the words "attempting its collection" merely in the sense of acting as a State official to represent the State in the pending tax proceedings in the California court. The executor thus now urges substitution on the theory that it is interpleading the office and not the man.

At page 4 the executor asks, "Does he deny . . . that they (the California respondents) were made respondents solely in their capacity as "public officers"? Is

the executor now abandoning its position that it is interpleading these respondents as individuals, stripped of their representative character, and taking the position that the District Court has jurisdiction to interplead them as the agents and representatives of their State to represent the State in the trial of the issues as to the extent of the executor's or the estate's obligation to the State?* If it is, then why the need of any substitution, for the executor would be admitting itself out of court on the main issue raised by the Certiorari proceeding! *Missouri* v. *Fiske,* 290 U. S. 18, 25–28; *In re Ayers,* 123 U. S. 443, 505–6; *Missouri etc. Ry. Co.* v. *Missouri etc. Commissioners,* 183 U. S. 53, 58–9; *Fitts* v. *McGhee,* 172 U. S. 516, 529; *Ex parte State of New York* No. 1, 256 U. S. 490, 500–2; *Monaco* v. *Mississippi,* 292 U. S. 313, 322–324; *Cargile* v. *N. Y. Trust Co.,* 62 F. (2) 585, 587–8, cert. denied, 292 U. S. 625. A state is not a citizen and therefore cannot be interpleaded under the Interpleader Act; and even if that Act had contemplated the impleading of states, either directly or through their representatives, it would violate the Eleventh Amendment.

If the executor now admits that it is attempting to interplead the California respondents in their representative capacity as agents of their State, we submit that the motion to substitute must be denied for the reason that the Interpleader Act does not and could not authorize the interpleader suits against state officials as the representatives or agents of their states.

And finally, we submit that, in any event, the motion

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* It is to be noted in this connection that in any event there is an inheritance tax obligation to the State of California for the decedent owned real estate there (R. 3), and therefore the only question before the District Court on a trial on the merits would be as to the *amount* of that obligation. (Under the Interpleader Act the court "shall discharge the complainant from further liability" for its obligation.)

should be denied on the authority of *Ex parte La Prade*, 289 U. S. 444.

In that case a bill had been brought in a three-judge court to enjoin the Attorney General of Arizona (one Peterson), who had threatened *colori officii* to enforce penalties prescribed by an alleged unconstitutional statute. After the suit had been brought, Peterson's term of office expired, and La Prade then became the Attorney General. The original plaintiffs then made application to the court, under 28 U. S. C. sec. 780 for an order substituting La Prade as party defendant. La Prade appeared specially and objected, but his objection was overruled on the ground that the duty of enforcement was imposed by the statute upon each succeeding attorney general and that so long as there was an attorney general the threat of prosecution was always present and that the resulting injury, if any, always impends. La Prade also filed a motion to dismiss, which was also overruled. An order for substitution was then entered and the court proceeded to hear the bill on its merits, although La Prade declined to participate, and entered a decree that the statute was unconstitutional and enjoined La Prade from enforcing it. La Prade then filed in this Court a petition for a writ of mandamus requiring the three-judge court to dismiss the suit in which he had been substituted.

In holding that the court had no jurisdiction to substitute La Prade this Court pointed out that the suit had been brought against defendant *not* as a representative of the State, but to restrain him individually from enforcing an allegedly unconstitutional act, and that the principle upon which such suits were maintained was that the officer in such a case was "stripped of his official or representative character".

This Court further pointed out that the laws of Arizona did not authorize substitution of La Prade for

his successor, *Irwin* v. *Wright,* 258 U. S. 219, 222; that the suit abated when Peterson ceased to be attorney general; and that, unless empowered by sec. 780, the district court was without jurisdiction to direct that La Prade be substituted. *United States ex rel Bernadin* v. *Butterworth,* 169 U. S. 600, 605; *Shaffer* v. *Howard,* 249 U. S. 200, 201; *Gorham Mfg. Co.* v. *Wendell,* 261 U. S. 1.

"A suit to enjoin a public officer from enforcing a statute is personal and in the absence of statutory provision for continuing it against his successor, abates upon his death or retirement from office." *Irwin* v. *Wright, supra.* The Arizona statute considered in that case and held not to permit substitution of a successor sued personally read as follows:

> "Sec. 461. An action shall not abate by the death or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court, on motion may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action."

The corresponding California statute, § 385 of the Cal. Code of Civil Procedure (Motion, 5), cannot be successfully distinguished. Furthermore, sec. 1004 of the Cal. Pol. Code (Motion, 5) clearly cannot be construed to transfer the personal liability of an officer to his successor.

This court further pointed out in the *La Prade* case that, although the 1925 amendment to sec. 780 (43 Stat. 941) was passed after the *Irwin* case, yet at least as to

state officers it did not purport to authorize the imposition of liability or restraint upon the successor on account of anything done or threatened by the predecessor.

The mere allegation, not supported by any alleged facts, that Harry B. Riley "has adopted the attitude of his predecessor in office" and that he is "threatening to assess and attempt to collect from the petitioner the" inheritance tax imposed by California tax statutes "upon the estates of California decedents", affords no ground for distinguishing the present case from the *La Prade* case. The only basis for such allegation is set forth at page 5 of the executor's Memorandum. It is that, because the counsel for the three original California respondents opposed Mr. Long's restoration as a party in the Circuit Court of Appeals and opposed the granting of certiorari, and because the same counsel are now representing Harry B. Riley, he "must be held to maintain (through such counsel) the right of the California tax officials to collect the tax imposed by their statute without interference by the Federal Court," and that therefore "it is evident that the successor Controller, Harry B. Riley, has adopted the attitude of his predecessor, Ray L. Riley, and approves the action of the other California respondents." There is nothing in that which amounts to a threatened wrong.

As we have already shown, there is no support for the allegation that he is threatening to assess and attempt to collect the inheritance tax. Only the California court, after hearing all the parties, can fix or assess the tax liability. The new Controller will have nothing to do with the collection of the tax, for that is the function of the County Treasurer, acting for the State. All that the allegation that Harry B. Riley has "adopted the attitude" of his predecessor amounts to is that it must be assumed that he approves the action of Gentry and Sproul in continuing to contest the jurisdiction of the

district court over them, and that, if substituted, he also will contest such jurisdiction. Would that be a dire wrong?

The Inheritance Tax Appraiser is claiming the right to proceed with the taking of testimony and to make his determination and report it to the California Court without being molested or enjoined by the Federal District Court in Massachusetts. The Controller is claiming the right, without similar molestation, to appear in behalf of the State in that court proceeding *after* the report is filed and he is notified hereof, and press whatever contention the State should make at the hearing before that court to determine the estate's tax liability. The Inheritance Tax Attorney is claiming the right, without similar molestation, to act as the official attorney for such Controller in such court proceeding. Surely there can be nothing in any of those "attitudes" to warrant this Court in distinguishing the present case from the *La Prade case*. None of those attitudes involve any threat to deprive the complainant of property without due process of law.

Wherefore it is respectfully submitted that the Motion to Substitute should be denied.

HARRY B. RILEY,

Individually and as Controller of the State of California, appearing specially, only, as aforesaid, by his Attorneys,

NORMAN W. BINGHAM, JR.,
GEORGE S. FULLER.

August, 1937.

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Supreme Court of the United States.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY,
Petitioner, Appellant,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL.,
Respondents, Appellees.

BRIEF FOR RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

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Supreme Court of the United States

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY,
Petitioner, Appellant,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL.,
Respondents, Appellees.

BRIEF OF RESPONDENT HENRY F. LONG, COMMISSIONER OF CORPORATIONS AND TAXATION OF THE COMMONWEALTH OF MASSACHUSETTS.

Certiorari to the Circuit Court of Appeals for the First Circuit reversing a decision of the District Court for the District of Massachusetts which enjoined the tax officials of Massachusetts and California from proceeding to assess an inheritance tax upon a bill filed by an executor under the Federal Interpleader Act of January 20, 1936.

Proceedings in Courts Below.

The appellant, Worcester County Trust Company, as executor under the will of Robert H. Hunt, filed a bill in the nature of a bill of interpleader under the provisions of Judicial Code, §24, as amended by Act of January 20, 1936 (c. 13, §1), 49 Stat. 1096, Title 28, U.S.C. §41 (26), in the United States District Court for the District of Massachusetts, against Henry F. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, Ray L. Riley, W. H. H. Gentry and Frank P. Sproul, Controller, Inheritance Tax Attorney and Inheritance Tax Appraiser, respectively, of the State of California, seeking to avoid the imposition of an inheritance tax by the taxing officials of both Massachusetts and California, who claimed that the decedent was domiciled in their respective States at the time of his death. The bill prayed for an injunction and determination of domicile.

The defendant Long filed an answer and submitted to the jurisdiction of the District Court, but the tax officials of California moved to dismiss the bill principally on the ground that the suit was one against the States. An injunction was granted and the motion denied. *Worcester County Trust Co., Executor,* v. *Long,* 14 Fed. Supp. 754.

A petition for certiorari to the District Court by the California defendants was denied on October 12, 1936, 299 U.S. 567. An appeal by these defendants to the Circuit Court of Appeals for the First Circuit was sustained by a

majority opinion. *Riley* v. *Worcester County Trust Co.*, 89 Fed. (2d) 59. A petition for certiorari to the Circuit Court was allowed by this court on May 24, 1937, 301 U.S. —, 57 S. Ct. 931.

The defendant Long declined to join the appeal from the District Court to the Circuit Court of Appeals, but subsequent to the decision in the latter court he sought and received from this court, on May 24, 1937, 301 U.S. —, 57 S. Ct. 931, permission to intervene as a party defendant.

Question Presented.

Is a Federal District Court empowered by the Interpleader Act, Judicial Code, §24 (26), as amended by the Act of January 20, 1936 (c. 13, §1), 49 Stat. 1096, 28 U.S.C. §41 (26), to hear a bill brought by an executor to enjoin the taxing officials of different States who threaten to impose inheritance taxes on the ground that the decedent at the time of his death was domiciled in their respective States?

The basic issue now calling for decision is whether or not the real parties in interest are the States of Massachusetts and California so that the District Court would be precluded from exercising jurisdiction by the Eleventh Amendment to the Constitution of the United States.

Constitutional and Statutory Provisions Involved.

The Eleventh Amendment to the Constitution provides:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

The Interpleader Act is set out in full in the Appendix, pages 35-38, and the portion now pertinent reads as follows:

> "The district courts shall have original jurisdiction as follows:
>
> . . . . . .
>
> "Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person . . . being under any obligation written or unwritten to the amount of $500 or more, if—
>
> "(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled . . . to any one or more of the benefits arising by virtue of any such obligations; and
>
> "(ii) The complainant . . . (b) has given bond payable to the clerk of the court in such amount and

with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

. . . . . .

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(e) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such . . . obligation until the further order of the court; . . ."

The pertinent Massachusetts and California statutes relative to inheritance taxes are also included in the Appendix to this brief, pages 39-68.

Statement of the Case.

On June 26, 1935, the appellant, Worcester County Trust Company, was appointed by the Probate Court of Worcester County, Massachusetts, executor under the will of Robert H. Hunt, who died on June 11, 1935. Ancillary administration was procured in California by the

appointment by the Superior Court of the County of Los Angeles on July 29, 1935, of the Security-First National Bank of Los Angeles as administrator with the will annexed (R. 2, 3). The estate, according to the allegations of the bill, consisted of real estate and bank deposits in California, but most of the bank deposits and the bulk of the intangible personal property, which is considerable in amount, is located in Massachusetts (R. 3). The bill, in its sixth paragraph, charges that the executor has in its possession money and property valued at more than five hundred dollars, to which the tax officials of both Massachusetts and California claim to be entitled adversely to each other under certain taxing statutes of each of the said States; that the executor is under an obligation to pay all inheritance taxes to the defendant tax officials, each of whom claims to be entitled thereto. The bill further alleges that, by virtue of the taxing provisions of each State, a lien is imposed upon all the property of the decedent for the payment of taxes assessed by the several defendants; that the defendant Long has determined that the decedent died domiciled in Massachusetts and has asserted and threatens to assess and to collect an inheritance tax in excess of one hundred thousand dollars, and that the defendant California taxing officers are threatening similar action on the ground that the decedent was domiciled in that State, and threaten likewise to collect a tax exceeding one hundred thousand dollars. The bill further avers that

only a nominal amount will be due the State other than the domiciliary State.

It is averred that the threatened collection of inheritance taxes in both States, based upon the inconsistent claim by the defendant tax officials that the decedent at his death was domiciled in their particular State, would be violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States (R. 5). The bill alleges and the record shows a surety company bond in the amount of two hundred thousand dollars has been filed with the clerk of the District Court, conditioned upon a compliance by the executor "with the future order or decree of the court with respect to the subject matter of the controversy" (R. 9, 10). The bill prayed for an injunction, the ascertainment of domicile, the determination of "the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's said obligation," and for general relief (R. 5, 6).

Upon the filing of the bill and the bond approved by the court, a temporary restraining order was issued against all the defendants (R. 12), and thereafter California defendants appeared specially and filed a motion to dismiss, objecting to the jurisdiction of the court mainly on the ground that, as the State of California was a real party in interest, a suit could not be maintained against it, by virtue of the Eleventh Amendment (R. 15). The District Court

issued an interlocutory injunction (R. 24) and denied the motion to dismiss in a written opinion (R. 26). *Worcester County Trust Co.* v. *Long,* 14 Fed. Supp. 754.

On appeal the Circuit Court of Appeals for the First Circuit by a divided court ordered the injunction to be dissolved and the cause be remanded to the District Court with directions to dismiss the bill for want of jurisdiction. (R. 43, 59). *Riley* v. *Worcester County Trust Co.,* 89 Fed. (2d) 59.

The defendant Long, Commissioner of Corporations and Taxation in Massachusetts, filed an answer in the District Court and submitted to the jurisdiction of that court (R. 20). He declined to join with the other defendants in their appeal from the decision of the District Court (R. 39), and by permission of this court, granted on May 24, 1937, he was restored as a party defendant.

Argument.

I. A Motion to Dismiss Admits the Facts Alleged in the Bill.

The appellees filed a motion to dismiss, and, consequently, are bound by the allegations of fact well pleaded in the bill, and they have no right to attack such allegations which are to be supported by evidence at the trial. They are confined to the proposition that the bill upon its face does not show a cause over which the District Court has jurisdiction. The scope of a motion to dismiss based

upon the allegations of the bill is similar to that prevailing in the case of a demurrer.

Old Company's Lehigh v. *Meeker,* 294 U.S. 227, 228.

United States v. *West Virginia,* 295 U.S. 463, 472.

Ickes v. *Virginia-Colorado Development Corp.,* 295 U.S. 639.

Pacific States Box & Basket Co. v. *White,* 296 U.S. 176.

The court "should still be obliged to indulge the presumption, in favor of the jurisdiction of the trial court, that respondents might be able to prove them." *Ickes* v. *Fox,* 300 U.S. 82.

And in cases where, as here, it was attempted to set up that the defendants were acting as agents and representatives of the State, this court has held that the mere suggestion is not enough, but must be sustained by proof. The contention that the defendants are acting entirely for and in behalf of the State is clearly a matter reaching to the merits rather than to the jurisdiction of the court, and unless it clearly appears upon the face of the record that the nature of the relief sought is such as to make the States real or indispensable parties, then the motion should be dismissed.

United States v. *Lee,* 106 U.S. 196, 218, 219.

Tindal v. *Wesley,* 167 U.S. 204, 215.

II. Only the Domiciliary State may Impose a Death Tax on Intangible Personal Property.

The bill alleges that the taxing officials of both States are threatening to impose an inheritance tax in an amount exceeding one hundred thousand dollars upon the intangible personal property of the estate on the ground that the decedent at the time of his death was domiciled in that particular State, and that the tax due, other than upon this intangible property, will only be in a nominal amount. The taxing officials both claim to be justified under the taxing statutes to collect and assess a tax on the intangible property. Both claim a lien upon the same property for the payment of the tax. They make similar claims upon a common source, although the origin of their claims is separate from and independent of each other. Their claims, however, are adverse to each other. Each claims that his State is the domiciliary State. Both cannot be right. The decedent at his death could have but one domicile, and the taxing officials of one of these two States must be acting in violation of the constitutional rights of the appellant and beyond the authority entrusted to them by the statutes of their own State. The tax claim of one of them is not warranted in law. The demand of the other is valid. The bill is brought to determine which set of taxing officials has the genuine and valid right to tax, for there can be only one such right. Hunt could have had but one domicile, and the determination of the locus of that domicile occasions the present controversy.

Prior to the adoption of the present interpleader statute, upon which the bill is purported to be based, each State where property of a decedent was located had the right to determine for itself the domicile of the decedent and the persons who were entitled to the property. The judgment of the courts of a sister State that the decedent at the time of his death was domiciled there in no way precluded another State where some of the property of the estate was located from deciding that he was domiciled in that State. The second State was not bound by the full faith and credit clause of the Constitution of the United States (art. IV, §I) to give effect to the prior finding in the other State.

Thormann v. *Frame,* 176 U.S. 350.
Overby v. *Gordon,* 177 U.S. 214.
Tilt v. *Kelsey,* 207 U.S. 43.
Baker v. *Baker, Eccles & Co.,* 242 U.S. 394.

Recently, in Massachusetts, a finding that a person was domiciled in Maine did not prevent the Massachusetts court from finding that she was at the time in question domiciled in the latter State. *Tuells* v. *Flint,* 283 Mass. 106. The fact that the courts of Pennsylvania decided that a decedent was domiciled there and that the executor was liable to death taxes in the amount of several million dollars did not prevent the courts of New Jersey from adjudicating that his domicile was there and collecting

from the executor a similar amount. *Estate of Dorrance,* 309 Pa. 151. *In re Dorrance,* 116 N.J. Eq. 204. *New Jersey* v. *Pennsylvania,* 287 U.S. 580. *Dorrance* v. *Pennsylvania,* 287 U.S. 660. *Hill* v. *Martin,* 296 U.S. 393. *Dorrance* v. *Martin,* 298 U.S. 678. See *In re Pusey's Estate,* 321 Pa. 248, certiorari denied, *sub. nom. Lavely* v. *Young Women's Christian Assoc.,* 299 U.S. 572, rehearing denied 299 U.S. 621.

There is now pending in this court an original proceeding, No. 13, *Texas* v. *Florida et al.,* 300 U.S. 642, in which one State complains that, if each of the other three defendant States decides, as they threaten to do, that one Green was domiciled at his death within its boundaries, there will not be enough assets left to pay the inheritance taxes claimed to be due Texas, which is also claiming to be the domiciliary State. That is a controversy between sovereign States in their own right and for their own benefit. Such a remedy is not open to an executor even though a State may wish to protect him as one of her own citizens and at the same time be able to collect an inheritance tax.

New Hampshire v. *Louisiana,* 108 U.S. 76.
Louisiana v. *Texas,* 176 U.S. 1.

A single tribunal where a final decision would be binding upon the estate and upon the taxing officials of various States claiming to be entitled to tax the intangible property seems to be the only practical solution. The

voluntary submission to any court by the taxing officials of different States can hardly be expected. Only once has this occurred. *Matter of Trowbridge,* 266 N.Y. 283. Evidently a State court is not the proper tribunal, but the objections that may apply to it are entirely lacking in a Federal court. If the Interpleader Act is open to an estate for the determination of questions of domicile in order to determine what State is entitled to levy inheritance taxes upon intangible property, then a solution has been found to a problem which has attracted the interest not only of taxing officials but also of the general public.

45 Yale Law Journal, 1170.
49 Harvard Law Review, 1378.
50 Harvard Law Review, 950, 960.

An inquiry made during the last few months of the taxing officials of the various States as to cases pending between different States, occasioned by conflicting claims relative to domicile, discloses the following:

Arizona	One case with Indiana.
Arkansas	Two cases, one of which is with Washington.
California	Two cases, with Oregon and Washington.
Colorado	One case with Indiana.
Florida	One case with Texas.

Georgia	One case with New York.
Illinois	One case with Washington.
Indiana	Two cases, with Arizona and Colorado.
Kentucky	Two cases, with Washington and Pennsylvania.
Maine	One case with New York.
New Jersey	Two cases, both with Pennsylvania.
New York	Two cases, with Georgia and Maine.
Oregon	Three cases, two with Washington and one with California.
Pennsylvania	Three cases, two with New Jersey and one with Kentucky.
Texas	One case with Florida.
Washington	Seven cases, two with Oregon and one each with Kentucky, Alaska, Illinois, California and Arkansas.

The transfer from the decedent of his intangible personal property was a single event which could only occur in the domiciliary State. No death tax could be lawfully imposed upon such a transfer by any other State.

Farmers Loan & Trust Co. v. *Minnesota,* 280 U.S. 204.

First National Bank v. *Maine,* 284 U.S. 312.

City Bank Farmers Trust Co. v. *Schnader,* 291 U.S. 24.

III. The Interpleader Act of 1936 is an Appropriate Remedy.

The bill makes every allegation essential to bring it within the sweep of the act. The executor in substance alleges that (1) it is in possession of money or property of the value of more than $500, (2) which by virtue of certain taxing statutes of either Massachusetts or California it is under obligation to pay in an amount in excess of $100,000 to the taxing officials of one or the other of these States, but not to both; (3) that these officials, who are citizens of their respective and different States, are each claiming that the decedent was domiciled in their State at the time of his death and so are entitled to, and threaten to assess and collect, a death tax on the intangible personal property; (4) that the claims of these State authorities are adverse to each other and each denies that the decedent was at his death domiciled in the State of the other official; and (5) that, while the executor is under a single obligation to pay such a tax on the intangibles, it is in danger of being under a dual obligation, which, unless relief is granted, it will be compelled to satisfy by paying twice a tax based upon a transfer occasioned by death which could only have happened in one State and which could not authorize a double impost without being violative of its rights under the Fourteenth Amendment to the Constitution of the United States. A proper bond has been filed and an injunction has been sought and secured in accordance with the act.

We submit that the bill contains every material provision of the act and sets out a case for relief in the nature of a bill of interpleader if the act itself, upon which it is based, is valid.

The defendants are claimants, as each of them contends that he is entitled to be paid out of the assets of the estate an inheritance tax based upon the transfer of all its intangible property, and each contends that his claim arises from an obligation imposed upon the estate by the tax laws of his own State. The defendant Long, as Commissioner of Corporations and Taxation, is required to collect inheritance taxes by the express provisions of G.L. c. 65, §32, which, so far as material, provides: "The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter or by corresponding provisions of earlier laws within six months after the same become payable." The defendant Riley, as Controller of the State of California, is in charge of the inheritance tax department of that State, and, while the collection of the tax is delegated to county treasurers, yet the supervision and management of this entire taxing system is in charge of this defendant. See §445 and §19 of the California statutes, contained in the Appendix, pp. 41-44, 66.

Previous to the adoption of the original statute, Acts of February 22, 1917, c. 113, 39 Stat. 929, the Federal court did not have jurisdiction to hear a bill of interpleader where the claimants were citizens of different States. The

original act authorized such an interpleader action in behalf of insurance companies, and later the privilege was extended to liability and surety companies. Act of February 25, 1925, c. 317, §§1-3, 43 Stat. 976; Act of May 8, 1926, c. 273, §§1-3, 44 Stat. 446. These various successive statutes were repealed by the present Act of January 20, 1936, c. 13, §1, 49 Stat. 1096, and the scope greatly widened and enlarged. The remedy was no longer confined to bills of interpleader, but also to bills in the nature of interpleader. The nature of the liability of the complainant might now arise under any written or unwritten obligation to claimants of one or more benefits arising out of such an obligation, although the "conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another." The extent to which the act was amplified by the 1936 amendment is shown by black type in the act, which is set forth in the Appendix, pp. 35-38.

The present controversy comes within the terms of the present act, and the case set forth in the bill fits the statutory description. The appellees contend that it is manifest from its legislative history that Congress never intended to have the act apply to cases like the instant one. They hardly claim that the statutory language is not broad enough to include such a case. A statute is to be construed according to its terms, and where the phraseology is clear, plain, apt and general, no exemption should be read into

the enactment restricting its operation to certain persons and excluding others. "The words of the statute are plain and should be accorded the usual significance in the absence of some dominant reason to the contrary." *Old Colony Trust Co.* v. *Commissioner of Internal Revenue*, 301 U.S. —, 57 S. Ct. 813.

Hamilton v. *Rathbone*, 175 U.S. 414, 419, 421.
Crooks v. *Harrelson*, 282 U.S. 55, 59, 60.
Helvering v. *City Bank Farmers Trust Co.*, 296 U.S. 85.

The reports of various committees which drafted the measure and the debates on the floor of the Senate and the House of Representatives of those in charge of the passage of the bill may be resorted to only in case the language of the statute is ambiguous, and not where its phraseology is clear and manifest.

United States v. *Lexington Mill & Elevator Co.*, 232 U.S. 399, 409.
Caminetti v. *United States*, 242 U.S. 470, 485.
United States v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77.
Bengzon v. *Secretary of Justice*, 299 U.S. 410.

The contention that the statute should be read so as to exclude from its application taxing officials of various States finds no support in the language employed in the

enactment and does not warrant engrafting upon the statute an exception which is not included therein.

South Carolina v. *United States*, 199 U.S. 437.
Ohio v. *Helvering*, 292 U.S. 360.
United States v. *California*, 297 U.S. 175, 185.

A steamboat company carrying from one foreign port to another a passenger who escaped at an American port of call, claimed that it had not violated section 10A of the Immigration Act of February 5, 1917, 8 U.S.C. §146, as it had no intention of permitting the passenger to land at the American port. "To say that the passenger had not been brought to the United States unless the intent was to leave him here, is not to construe the statute but to add an additional and qualifying term to its provisions. This we are not at liberty to do under the guise of construction, because, where the words are plain there is no room for construction." *Osaka Shoshen Kaisha Line* v. *United States*, 300 U.S. 98, 101.

The instant case comes within the phraseology of this remedial statute, which should receive a broad construction and afford adequate protection to estates from multiple taxation and at the same time furnish a method by which the conflicting claims of the States may be expeditiously and finally adjudicated.

It was said of this same act, before its present amendment: "The statute is remedial and to be liberally construed. It is broad enough to cover any adverse claims

against the proceeds of the policies, no matter on what grounds urged," which, while contained in the opinion of the District Court, was held to be an adequate answer to the contention that the act should have a strict interpretation. *Sanders* v. *Armour Fertilizer Works*, 292 U.S. 190, 199.

A decision by a tribunal in a proceeding in which the estate and the tax officials of each State claim to be entitled to such a tax upon the question of domicile would effectually determine which of a number of States would have the exclusive right to lay and collect such a tax. The scramble of different States to collect a large death tax from the estate of one who has had residences located in such State should halt. The practice tends to destroy good relations between the States, to shake public confidence in our judicial system, and to permit the confiscation of property of an estate under the guise of law. The successive collections by different States is plainly contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The defendant Long submitted to the jurisdiction of the District Court, the same as the Connecticut officials voluntarily submitted to proceedings in the State courts of New York. In *Matter of Trowbridge*, 266 N.Y. 283. He raised no jurisdictional question, in an effort to secure an expeditious trial and decision as to whether Hunt was domiciled in Massachusetts or California, and for the fur-

ther reason that he recognized the inherent injustice that threatened the executor. The attitude of this defendant was referred to by Morton, J., in his dissenting opinion in these words: "One of the claimants, Mr. Long, Tax Commissioner of Massachusetts, regards the considerations just mentioned as so weighty that he makes no objection on jurisdictional grounds and approves the practice of submitting such cases of disputed domicile to the impartial determination of the federal courts." *Riley* v. *Worcester County Trust Co.*, 89 Fed. (2d) 59, 69.

We submit that the statute is broad enough to give the District Court jurisdiction; that there is urgent necessity in the interests of public justice in order that such controversies should be quickly and finally settled in a single tribunal and for the protection of the property of decedents against claims the satisfaction of which is contrary to the constitutional guaranty.

IV. The Interpleader Act is Not Violative of the Eleventh Amendment to the Constitution.

The appellees' main objection is that the defendants were before the District Court as agents and representatives of two States, which it is claimed were the real parties in interest, and that, consequently, the Eleventh Amendment inhibited the court from taking jurisdiction. That contention was overruled by the District Court, but was sustained by a majority opinion in the Circuit Court of Appeals for the First Circuit.

The rights of the State against being impleaded in a Federal court by a private citizen rise no higher than the right of the citizen to be free from having his property taken from him without due process of law. Both the Eleventh and Fourteenth Amendments to the Constitution of the United States are parts of a single instrument and are of equal validity. *Prout* v. *Starr*, 188 U.S. 537.

The protection accorded a citizen against the confiscation of his property under the guise of a tax law is superior to the attempt of the State to sequester the property by the enactment of an unconstitutional statute or by the enforcement of such a statute by its officials; otherwise the Constitution of the United States would cease to be the supreme law of the land. *Poindexter* v. *Greenhow*, 114 U.S. 270, 292.

It is well-established law that the Federal court has jurisdiction to enjoin the action of State officials who are attempting to enforce an unconstitutional statute to the detriment of the rights secured by the Constitution of the United States. Such suits are not against the States.

Osborn v. *United States Bank*, 9 Wheat. 738.
Board of Liquidation v. *McComb*, 92 U.S. 531.
Poindexter v. *Greenhow*, 114 U.S. 270, 292.
Pennoyer v. *McConnaughy*, 140 U.S. 1, 10.
Stanley v. *Schwalby*, 147 U.S. 508, 518.
In re Tyler, 149 U.S. 164.

Scott v. *Donald*, 165 U.S. 107.

Tindal v. *Wesley*, 167 U.S. 204.

Smyth v. *Ames*, 169 U.S. 466.

Prout v. *Starr*, 188 U.S. 537.

Ex parte Young, 209 U.S. 123, 160.

Western Un. Tel. Co. v. *Andrews*, 216 U.S. 165, 166.

Herndon v. *Chi., Rock Island & Pac. Ry.*, 218 U.S. 135, 155.

Hopkins v. *Clemson College*, 221 U.S. 636, 642, 643.

Philadelphia Co. v. *Stimson*, 223 U.S. 605, 621.

Home Tel. & Tel. Co. v. *Los Angeles*, 227 U.S. 278, 287, 288.

Truax v. *Raich*, 239 U.S. 33, 37.

Ex parte State of New York, 256 U.S. 490, 500.

Terrace v. *Thompson*, 263 U.S. 197, 214.

Fidelity & Deposit Co. v. *Tafoya*, 270 U.S. 426.

Old Colony Trust Co. v. *Seattle*, 271 U.S. 426.

Iowa-Des Moines National Bank v. *Bennett*, 284 U.S. 239, 241.

Sterling v. *Constantin*, 287 U.S. 378, 393.

"And it is no objection to the remedy in such cases, that the statute whose application in the particular case is

sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous, where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases, either as unconstitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way they operate to deprive the party complaining of a right secured to him by the Constitution of the United States.' *Poindexter* v. *Greenhow,* 114 U.S. 270, 295.

"A suit against state officers to enjoin them from enforcing a tax alleged to be in violation of the Constitution of the United States is not a suit against a State within the prohibition of the Eleventh Amendment." *Gunter* v. *Atlantic Coast Line,* 200 U.S. 273, 283.

The theory established by those cases, however, is not limited to instances where the State officials are acting under unconstitutional statutes, but also applies where they are acting in an unlawful manner under a valid enactment.

"Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any

challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts." *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 390, 391.

"Although the law itself may be valid and provide for a proper valuation, yet if, through mistake on the part of the State, through its board of equalization and while acting as a *quasi*-judicial body, the board erred in the method to be pursued in relation to the corporations now before us, the mistake is one which may be corrected in equity." *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20, 38.

"The principle is not confined to the maintenance of suits for restraining the enforcement of statutes which as enacted by the state legislature are in themselves unconstitutional." *Greene* v. *Louisville & Interurban R.R. Co.*, 244 U.S. 499, 507.

The principle settled in *Ex parte Young*, 209 U.S. 123, to the effect that a suit to restrain state officials from enforcing an unconstitutional state statute in violation of the plaintiff's rights and to his irreparable damage is not a suit against the State, applies also when the statute itself is constitutional but the attempted administration of it is not.

Greene v. *Louisville & Interurban R.R. Co.*, 244 U.S. 499, 506.

"We have to consider only the legal effect under the federal law of this wrongful administration of the state law. There is no challenge of the validity of any state statute." *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239, 241.

"An officer transcending the limits of his authority under a constitutional statute may inflict similar injuries on property or individuals as though he were proceeding under an unconstitutional statute, and in either event, equity may intervene to restrain unfounded prosecutions." *Philadelphia Co.* v. *Stimson*, 223 U.S. 605.

The bill in the present case does not allege that the taxing statutes of either Massachusetts or California are unconstitutional. The officials of each of these States charged with the assessment and collection of inheritance taxes are, according to the bill, about to assess and collect from the estate two separate taxes on the same intangible personal property, and upon the same identical transfer from the dead to the living, in accordance with their inconsistent claims that the decedent at his death was domiciled in their own particular State and not in the other State. The claim, therefore, is that the taxing statutes of one of these States will necessarily be unconstitutionally applied to the damage of the executor.

In a majority of the cases where an injunction was issued against State officials, the basis for the proceedings

was that their conduct was in violation of the Fourteenth Amendment, and that such action on the part of these individuals brought the case within the sweep of this Amendment. *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239, 245.

The defendant Controller is charged with the enforcement of the inheritance tax law of California and the defendant Tax Commissioner is imposed with a similar obligation in respect to such tax statutes of Massachusetts. *Fitts* v. *McGhee*, 172 U.S. 516, is, therefore, inapplicable for the reasons stated in *Ex parte Young*, 209 U.S. 123, 156, 157. Even if these respondents purported to be acting as agents of the State, their agency would not prevent the Federal courts from restraining their illegal action even though the principal could not be impleaded in those courts. *Osborn* v. *United States Bank*, 9 Wheat. 738. A State cannot grant immunity to a tax official to violate the Federal Constitution and permit him, under color of office, to collect a tax, inherently invalid, and turn it over to the State Treasury. In attempting to assess and collect such a tax, the official is acting clearly in excess of his powers, even though he claims to be acting for and in behalf of the State. *Old Colony Trust Co.* v. *Seattle*, 271 U.S. 426. A State suffers no legal damage because its tax collector is restrained from collecting a tax which the Constitution forbids. The State which is found not to be the domiciliary State has lost nothing in the eyes of the law by being deprived of collecting an inheritance tax upon the

intangibles. The State determined not to be the domiciliary State has sustained no loss.

It is true that the States have not as yet received inheritance taxes from the executor. If they had, then perhaps the executor would be in a situation where it would be without any remedy. If the States retained the taxes, they could hardly be said to disavow the action of their officials. That would be action by the States clearly within the prohibition of the Fourteenth Amendment to the Constitution of the United States. That was the situation disclosed in *Iowa-Des Moines Nat. Bank* v. *Bennett,* 284 U.S. 239. But a citizen may resist the payment of a tax which, in accordance with the constitutional guaranty, ought not to be exacted from him. His right to resist is superior to the demand for payment. Yet his property in each State is subject to a lien for the discharge of which he is required to satisfy the tax, and even then to incur penalties and forfeitures. Relief can hardly be expected from each of the taxing States. The power of the State is back of each collector and his action in attempting to collect the tax comes within the Fourteenth Amendment. "It provides, therefore, for a case where one who is in possession of state power uses that power to the doing of the wrongs which the Amendment forbids even although the consummation of the wrong may not be within the powers possessed if the commission of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer. That is to say, the theory of the Amend-

ment is that where an officer or other representative of a State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the Amendment, inquiry concerning whether the State has authorized the wrong is irrelevant and the Federal judicial power is competent to afford redress for the wrong by dealing with the officer and the result of his exertion of power." *Home Tel. & Tel. Co.* v. *Los Angeles,* 227 U.S. 278, 287. *Iowa-Des Moines Nat. Bank* v. *Bennett,* 284 U.S. 239, 246.

V. The Appellant may Invoke the Interpleader Act.

The appellees contend that the executor, a Massachusetts fiduciary, does not comply with the provisions of the Interpleader Act, because it has not any money or property in its possession to which both claimants are contending to be entitled, because they say their claim is against the California fiduciary, which is not a party to the bill. The latter has in its possession the property located in California, but the physical locus of the intangibles is immaterial. We are here concerned with an excise and not a property tax. The tax situs of the intangibles is determined by the principle of *mobilia sequuntur personam. Baldwin* v. *Missouri,* 281 U.S. 586. *Beidler* v. *So. Carolina Tax Commission,* 282 U.S. 1. It is true that there is no privity between the Massachusetts executor and the California administrator with the will annexed. *Brown*

v. *Fletcher's Estate,* 210 U.S. 82. *Ingersoll* v. *Coram,* 211 U.S. 335. But the death impost in each State is not an estate tax, but is a succession tax. *Leach* v. *Nichols,* 285 U.S. 165. California Inheritance Tax, §9, Appendix, pp. 49-50. While payment in the first instance is made by the personal representative, the ultimate burden is sustained by the same beneficiaries, the devisees and legatees. It is probably a matter of indifference to them whether the tax on intangibles is paid to the Massachusetts or to the California authorities, provided they are chargeable with but one tax. The executor represents the same identical beneficiaries as the administrator with the will annexed, and a payment of either will eventually be borne by them, and they being the real parties in interest, a judgment in either Massachusetts or California in which they were represented by the executor or administrator with the will annexed would be binding on them. *Chicago, R.I. & P. Ry.* v. *Schendel,* 270 U.S. 611, 622.

Although it has not yet been decided that one State can bring an action in a sister State to recover taxes, yet it seems that such a result would only be a short and logical step from the principle that, if the claim for taxes had been reduced to a judgment, a suit on that judgment could be maintained in another State. *Milwaukee County* v. *M. E. White Co.,* 296 U.S. 268.

In the next place, Massachusetts has a reciprocal probate statute which forbids a settlement of estates of persons dying in another State until inheritance taxes due in

the State of the death have been paid. Acts of 1933, c. 319. California has a similar statute; see §6½ (Appendix, pp. 48-49). In any event, it is clear that under the California statute (see Appendix, pp. 44-67) the State places the obligation to pay the tax upon the executor and imposes a lien upon all property until the tax is paid, yet the appellees claim that the executor is under no obligation to pay the tax. It is clear, however, that until the tax is paid the property in California, at least, is held as security for its payment, and probably might be sold in satisfaction of the tax. In order to obtain the assets of the estate it will be necessary for its personal representative to free them from the tax lien, and this can only be done by a satisfaction of the tax. If the executor wishes to prohibit a sale of the estate assets, it is, therefore, under compulsion to pay, and the only choice it has is to pay in order to secure the property that belongs to it for the purpose of distribution to those entitled thereto.

VI. A Single District Judge had Jurisdiction.

The appellees now contend that a single District Court judge was not empowered to hear the case. Their motion to dismiss attacked the entire bill as one over which the District Court had jurisdiction. The specific objection that it was a case to be heard by three judges was never raised and was inconsistent with the claim made in the District Court that that tribunal had no jurisdiction and not

that it had jurisdiction if the hearing was before three judges. The point now raised is not open on this record. *Grosjean* v. *American Press Co.*, 297 U.S. 233, 241, 242. If they had claimed that the case ought to have been heard by three judges, they should have so requested, and, upon refusal of the judge to call in two other judges, the appropriate remedy was a petition for mandamus, and not an appeal. *Ex parte Metropolitan Water Co.*, 220 U.S. 539.

Judicial Code, §266, 28 U.S.C. §380, provides that "No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application."

The petitioner did not allege that the taxing statutes of either Massachusetts or California were unconstitutional. The validity of each taxing system was assumed, but the contention is that the tax statute of one of these States is threatened to be wrongfully applied. The constitutionality of the State statutes not being involved, the case at bar does not come within the sweep of section 266. *Ex parte Buder,* 271 U.S. 461. *Gully* v. *Interstate Nat. Gas Co.,* 292 U.S. 16.

The bill does not set forth any order or decree which the taxing officials of either State have made, but simply complains that both propose to enforce their taxing statutes. The executor complains of wrongful conduct which is imminent and not the promulgation of any assessment or levy. Under such circumstances, section 266 has no application. *Ex parte Williams,* 277 U.S. 267. *Ex parte Hobbs,* 280 U.S. 168.

Moreover, the act expressly provides that the court is empowered to issue process and an injunction. There is no mention of any requirement of a three-judge court. It eliminates any possible doubt that both sections 265 and 266 of the Judicial Code did not apply. It was expressly enacted: "(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States Court . . ."

Conclusion.

This defendant submits that the States are unable to settle between themselves conflicting claims of domicile; that duplicate taxation of estates upon the basis of dual domicile is unjust; that the solution of a problem which is becoming more acute and wide-spread lies in a Federal court which, having jurisdiction of the parties and the subject-matter, will be enabled in this class of cases to determine the locus of a debated domicile. The Interpleader Act is capable of furnishing relief. It does not impair the rights of the States conferred by the Eleventh Amendment, and it does protect private property by enforcing the Fourteenth Amendment.

We submit that the action of the District Court in issuing an injunction was correct and the majority opinion of the Circuit Court of Appeals remanding the case to the District Court, with directions to dismiss it for want of jurisdiction, was erroneous and should be revised.

HENRY F. LONG,
Commissioner of Corporations and Taxation
of the Commonwealth of Massachusetts,
By Paul A. Dever,
Attorney General,
James J. Ronan,
Assistant Attorney General.

APPENDIX.

INTERPLEADER ACT.

[PUBLIC—NO. 422—74TH CONGRESS.] [S. 1277.]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader.—Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or **bills in the nature of bills of interpleader** duly verified, filed by **any person, firm, corporation, association, or society** having in his or its custody or possession money or property of the value of $500 or more, or having issued a **note,** bond, certificate, policy of insurance, **or other instrument** of the value or amount of $500 or more, or providing for the delivery or payment **or the loan** of money or property of such amount or value, or **being under any obligation written or unwritten to the amount of $500 or more,** if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such

money or property, **or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations;** and

"(ii) The complainant (a) has deposited such money or property or has paid the amount **of or the loan or other value of such instrument or the amount due under such obligation** into the registry of the court, there to abide the judgment of the court; **or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.**

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) **Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.**

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any

State court or **in any United States court** on account of such money or property or on such **instrument or obligation** until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) **In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U.S.C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equi-**

table defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right; accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

Massachusetts Statutes.

General Laws (Ter. Ed.) c. 65, sec. 1.

All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth, and all real estate or any interest therein and all tangible personal property within the commonwealth belonging to persons who are not inhabitants of the commonwealth except such an interest in such real estate as is represented by a mortgage or by a transferable certificate of participation or share of an association, partnership or trust, which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money's worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death, and any beneficial interest therein which shall arise or accrue by survivorship in any form of joint ownership in which the decedent joint owner contributed during his life any part of the property held in such joint ownership or of the purchase price thereof, to any person, absolutely or in trust, except to or for the use of charitable, educational or religious societies or institutions, the property of which is by the laws of the commonwealth exempt from taxation, or for or upon trust for any charitable purposes to be carried out within

the commonwealth, or to or for the use of the commonwealth or any town therein for public purposes, shall be subject to a tax at the percentage rates fixed by the following table:

Relationship of Beneficiary to Deceased.	Rate Per Centum of Tax on Value of Property or Interest.							
	On Value not over $10,000.	On Excess above $10,000, not over $25,000.	On Excess above $25,000, not over $50,000.	On Excess above $50,000, not over $250,000.	On Excess above $250,000, not over $500,000.	On Excess above $500,000 not over $750,000.	On Excess above $750,000, not over $1,000,000.	On Excess above $1,000,000.
Class A.								
Husband, wife, father, mother; child, adopted child, adoptive parent, grandchild, ...	1%	1%	2%	4%	5%	6%	7%	8%
Class B.								
Lineal ancestor, except father or mother; lineal descendant, except child or grandchild; lineal descendant of adopted child; lineal ancestor of adoptive parent; wife or widow of a son; husband of a daughter, ...	1%	2%	4%	5%	6%	7%	8%	9%
Class C.								
Brother, sister, half brother, half sister, nephew, niece, step-child or step-parent, ...	3%	5%	7%	8%	9%	10%	11%	12%
Class D.								
All others, ...	5%	6%	7%	8%	9%	10%	11%	12%

Provided, however, that no property or interest therein, which shall pass or accrue to or for the use of a person in Class A, except a grandchild of the deceased, unless its value exceeds ten thousand dollars, and no other property or interest therein, unless its value exceeds one thousand dollars, shall be subject to the tax imposed by this chapter, and no tax shall be exacted upon any property or interest so passing or accruing which shall reduce the value of such property or interest below said amounts.

All property and interests therein which shall pass from a decedent to the same beneficiary by any one or more of the methods hereinbefore specified and all beneficial interests which shall accrue in the manner hereinbefore provided to such beneficiary on account of the death of such decedent shall be united and treated as a single interest for the purpose of determining the tax hereunder.

GENERAL LAWS (TER. ED.) c. 65, SEC. 6.

Administrators, executors and trustees, grantees or donees under conveyances or gifts made during the life of the grantor or donor, persons to whom beneficial interests shall accrue by survivorship and beneficiaries receiving additional property as provided in section twenty-seven, shall be liable for the taxes imposed by this chapter, with interest, until the same have been paid.

CALIFORNIA POLITICAL CODE, 1931.

POLITICAL CODE PROVISIONS.

INHERITANCE TAX OFFICE TO BE MAINTAINED BY CONTROLLER.

§ 445. The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state.

Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for use of inheritance tax appraisers or other use as the controller may direct.

In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney, whose office shall be in the city of Sacramento, five assistant inheritance tax attorneys, two of whom shall have their offices in the city of Los Angeles, two of whom shall have their offices in the city and county of San Francisco, and one of whom shall have his office in the city of Sacramento. Said attorneys shall be civil executive officers and shall be admitted and licensed to practice before the supreme court of this state. The inheritance tax attorney shall, under the authority and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with said department and shall perform such other duties as the controller may direct.

Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct.

The salary of said inheritance tax attorney shall be four thousand two hundred dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be four thousand two hundred dollars per annum. The salary of the second assistant inheritance tax attorney whose office shall be in the city of Los Angeles shall be three thousand dollars per annum. The salary of one assistant inheritance tax attorney whose office shall be in the city and county of San Francisco shall be four thousand two hundred dollars per annum. The salary of the second assistant inheritance tax attorney, whose office shall be in the city and county of San Francisco shall be three thousand dollars per annum. The salary of said assistant inheritance tax attorney whose office shall be in the city of Sacramento shall be three thousand dollars per annum. The salaries of said inheritance tax attorney and of said assistant inheritance tax attorneys shall be paid at the same times and in the same manner as the salaries of other state officers.

Said attorneys shall also receive their necessary traveling and incidental expenses. Said expenses and any other and

further and additional expenses for attorneys, clerks, experts, agencies or persons or for any other purpose which said controller may find necessary or proper in the conduct of said inheritance tax department shall be paid out of such moneys as may be appropriated from time to time to the controller for use of said inheritance tax department.

California Inheritance Tax Act.

Acts of 1921 as amended in 1923, 1925, 1927 and 1929.

Section 1. (1) This act shall be known as the "inheritance tax act."

(2) The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state or subject to the jurisdiction thereof; *provided,* that for the purpose of this act upon the death of the husband one-half of the community property is taxable under the provisions of this act; *provided, further,* that when the husband by testamentary disposition of the community property forces the surviving wife to elect whether to take under his will or by operation of law, the one-half or less of the community property, which the wife takes under the said will in lieu of the one-half belonging to her under the provisions of section

one thousand four hundred one of the Civil Code, shall not be taxable under the provisions of this act; the provisions of this proviso shall also extend to those estates now in probate and in which the orders fixing tax have not become final judgments as provided by this act; *provided, further,* the one-half of the community property which belongs to the surviving spouse, under the provisions of section one thousand four hundred one of the Civil Code, and, in the case of the death of the wife, the community interest which goes to her husband under the provisions of section one thousand four hundred two of the Civil Code in the absence of her testamentary disposition thereof to another or others, shall not be deemed to pass to such surviving spouse as heir, but shall for the purpose of this act, be deemed to go, pass or be transferred for a valuable consideration, and the said one-half of the community property and the interest last mentioned going as aforesaid to the surviving husband shall not be subject to the provisions of this act; *provided, further,* that for the purposes of this act, personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either husband or wife if acquired while domiciled in this state shall be deemed to be community property; *provided, further,* that in case of a transfer of the community property from one spouse to the other within the meaning of subdivision three (3) or five (5) of section two of this act, one-half of the

community property so transferred shall not be subject to the provisions of this act; *and provided, further,* that the presumption that property acquired by either husband or wife after marriage is community property, shall not obtain for the purpose of this act as against any claim by the state for the tax hereby imposed; but the burden of proving such property to be community property shall rest upon the person claiming the same to be community property.

(3) The word "transfer" as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described.

(4) The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

(5) The words "county treasurer" and "inheritance tax appraiser," as used in this act, shall be taken to mean the treasurer or the inheritance tax appraiser of the county of the superior court having jurisdiction as provided in section fifteen of this act.

[(6) Refers to the effective date.]

SEC. 2. TAX ON TRANSFERS. A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income

therefrom in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, said taxes to be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted, in the following cases:

(1) RESIDENT DECEDENTS. When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

(2) NONRESIDENT DECEDENTS. When the transfer is by will or intestate laws of property within this state and the decedent was a nonresident of the state at the time of his death, or by any order of court setting apart property and/or making and granting extra or family allowances pursuant to article one, chapter five, title eleven, part three of the Code of Civil Procedure.

[The remaining subdivisions, dealing with transfers in contemplation of death, joint accounts, etc., are not material.]

SEC. 3. Such taxes shall be and remain a lien upon the property passed or transferred until paid; *provided, however,* that where property is sold under and in accordance

with the provisions of chapter seven, title eleven, part three of the Code of Civil Procedure the lien herein provided for shall be released from the property so sold and shall attach to the proceeds of such sale, and the person to whom the property passes or is transferred, except as herein in this section provided, and all administrators, executors and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. The provisions of the Code of Civil Procedure relative to the limitation of time of enforcing a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty prescribed by this act, and this section shall be construed as having been in effect as of date of the original enactment of the inheritance tax law; *provided,* that unless sued for within five years after they are due and legally demandable, such taxes, or any taxes accruing under any act herein repealed, shall cease to be a lien as against any bona fide purchaser of said property; *and provided,* that no such lien shall cease within two years from the date of the passage of this act.

. . . . . .

SEC. 6½. The tax imposed by this act in respect of intangible personal property shall not be payable if the decedent is a resident of a state or territory of the United States or a foreign state or country which at the time of his death imposed a legacy, succession or death tax in re-

spect of intangible personal property within said state or territory or foreign state or country of residents of said state or territory or foreign state or country, but did not impose a legacy or succession tax or a death tax of any character in respect of intangible personal property within said state or territory or foreign state or country of residents of this state, or if the laws of the state or territory or foreign state or country of residence of the decedent at the time of his death contained a reciprocal provision under which nonresidents were exempted from legacy or succession taxes or death taxes of every character in respect of intangible personal property providing the state or territory or foreign state or country of residence of such nonresidents allowed a similar exemption to residents of the state or territory or foreign state or country of residence of such decedent. For the purposes of this act the District of Columbia shall be considered a territory of the United States.

. . . . . .

SEC. 9. (1) Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until

he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(2) All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(3) Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending.

SEC. 10. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor, in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller

of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court. Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

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SEC. 12. (1) POWER OF INSPECTION. Whenever the state controller shall have reasonable cause to believe that a tax is due under the provisions of this act, upon any transfer of any property, and that any person, firm, institution, company, association or corporation has possession, custody or control of any books, accounts, papers or documents relating to or evidencing such transfer, the state controller or inheritance tax attorney, or any assistant inheritance tax attorney of the inheritance tax department, is hereby authorized and empowered to inspect the books, records, accounts, papers and documents of any such per-

son, firm, institution, company, association or corporation, including the stock transfer book of any corporation, and to administer oaths to and examine any such person or any officer or agent of such firm, institution, company, association or corporation, for the purpose of acquiring any information deemed necessary or desirable by said state controller or such inheritance tax attorney or assistant inheritance tax attorneys, for the proper enforcement of this act, and for the collection of the full amount of tax which may be due the state hereunder.

[The rest of the section forbids tax officials to divulge information and provides penalties for refusal to show books and papers to tax officials.]

SEC. 13. (1). CORPORATE STOCK. No corporation organized or existing under the laws of this state, shall transfer on its books or issue a new certificate for any share or shares of its capital stock belonging to or standing in the name of a decedent or in trust for a decedent or belonging to or standing in the joint names of a decedent and one or more persons, without the written consent of the state controller or person by him in writing authorized to issue such consent.

(2) SAFE DEPOSIT BOXES. No safe deposit company, trust company, corporation, bank, or other institution, person or persons engaged in the business of renting safe deposit boxes or other receptacles of similar character shall rent any such box or receptacle without first requiring all

persons given access thereto to agree in writing to notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of any person having the right of access thereto, before seeking access to such box or receptacle after the death of such person; and all persons having the right of access to any such safe deposit box or receptacle upon the death of any other person having access thereto, before seeking access to such box or receptacle must notify such safe depositary, bailee, or lessor, from whom such box or receptacle is rented of the death of such person; and it shall be unlawful for any safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or under control, custody or partial custody any safe deposit box or similar receptacle, to permit access thereto by any one after the death of any person who at the time of his death had the right or privilege of access thereto either as principal, deputy, agent, or cotenant without the consent of the state controller or such person by him in writing authorized to issue such consent.

(3) BANK DEPOSITS, ETC. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control or custody or under partial control or partial custody securities, deposits, assets or property belonging to or standing in the name of a decedent who was a resident or nonresident, or belonging to, or standing in the joint names of

such a decedent and one or more persons, including the shares of the capital stock of, or other interest in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives, agents, deputies, attorneys, trustees, legatees, heirs, successors in interest of said decedent or to any other person or persons, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed thereon under this act and unless notice of the time and place of such delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; *provided,* that the state controller, or person by him in writing authorized so to do, may consent in writing to said delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation hereunder to give such notice or to retain any portion of said securities, deposits or other assets in their possession or control. And it shall be lawful for the state controller or county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of said delivery or otherwise.

[The rest of the section refers to penalties.]

SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section one thousand four hundred forty-four of the Code of Civil Procedure) shall be paid for his services out of any inheritance tax moneys in the hands of the treasurer of the county in which he may be acting, a reasonable compensation, to be fixed by the superior court of said county, or a judge thereof, and, together with said compensation, said appraiser shall be allowed his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, said expenses and fees to be allowed by said superior court or a judge thereof; *provided,* that any claim for any such services or expenditure, must before payment, first receive the approval of the state controller; *and provided, further,* that in any probate proceeding in which the executor or administrator shall have failed to have had the inheritance tax appraiser act as one of the appraisers under section one thousand four hundred forty-four of the Code of Civil Procedure and to have paid him his fees therefor, the expense of making the inheritance tax appraisement in this act provided for shall be paid out of said estate, and the executor or administrator thereof shall be liable for said fee. Any such appraiser who shall take any fee or reward, other than such as may be

allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days or both, and in addition thereto the court shall dismiss him from such service.

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SEC. 16. (1) APPOINTMENT AND REPORT OF INHERITANCE TAX APPRAISERS. When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist

said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate, or any person interested therein, or any other person whom he may have reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or of such executor or administrator, or other person under oath concerning such property and the value thereof, and concerning the property or the estate

of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

(2) NOTICE OF FILING REPORT. ORDER CONFIRMING REPORT AND FIXING TAX. Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted at the court house in the county where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a

copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of the said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections, said court, may make such order as to it may seem meet and proper in the premises; *provided,* that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

(3) ORDER THAT NO INHERITANCE TAX DUE. If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or inter-

est therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

SEC. 17. (1) DETERMINING TAXABILITY OF TRANSFER. If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act, and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor, and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred, to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be, concerning said transfer and all facts connected

therewith, and concerning the property transferred and the character and value thereof.

EXAMINATION BY APPRAISER. If said person or persons shall be directed to appear before said appraiser said appraiser shall, at the time and place in said order named, or at such time and place to which said appraiser may adjourn said hearing, proceed to examine said person or persons and such witnesses as said appraiser may subpoena before him, and for the purpose of said hearing, and for the purpose of ascertaining any facts concerning the taxability of said transfer or any taxes due on account of such transfer, said appraiser shall have the powers of a referee of said court, and is hereby authorized to issue subpoenas compelling the attendance of witnesses before him, and to administer oath, and to take the evidence of such witnesses under oath concerning such property and the value thereof and concerning such transfer. Said appraiser shall report to said court his findings and conclusions in relation to said transfer and said tax, and may return to said court, any depositions, exhibits or other testimony or information taken before him or exhibited to him. The procedure subsequent to the filing of said report shall conform to subdivision (2) of section sixteen of this act.

PROCEEDINGS. Except as herein otherwise provided, the service of such citation and the time, manner and proof thereof, and the hearing and determination thereon, and the hearing and determination upon the facts returned in

such report, and the enforcement of the determination or decree, shall conform to the provisions of chapter twelve, title eleven, part three of the Code of Civil Procedure, and the clerk of the court shall, upon the request of the state controller, furnish, without fee, one or more transcripts of such decree, and the same shall be docketed and filed by the county clerk of any county in the state, without fee, in the same manner and with the same effect as provided by section six hundred seventy-four of said Code of Civil Procedure for filing a transcript of an original docket.

HEARING BY COURT. The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(2) PETITION TO DETERMINE TAXABILITY. Verified petitions may be filed by any interested party with the superior court, alleging and admitting that a transfer within the meaning of this act has been made and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof, may be determined, and that the petitioner de-

sires such determination and desires to pay said tax, if any be due. Upon the filing of such petition the superior court or a judge thereof shall by order designate and appoint an inheritance tax appraiser to ascertain and report to said court the amount of the inheritance tax, if any, due by said petitioner on account of such transfer, and shall fix a time and place, not less than ten days thereafter, for the hearing of said matter before said inheritance tax appraiser, a copy of which petition and order shall be forthwith mailed to the state controller, and shall refer said petition and said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said reference to said appraiser shall conform to the provisions of subdivisions (1) and (2) of section sixteen of this act.

In the event that final judgment is rendered in said proceeding, ascertaining and determining that no inheritance tax is due on account of said transfer or that the amount of the tax to which said transfer is liable, is less than twenty dollars the court shall, in addition to the amount of the tax, if any, include in such judgment and assess against the petitioner reasonable compensation for said inheritance tax appraiser, not exceeding the sum of ten dollars, and the necessary traveling and incidental expenses of said appraiser.

(3) ACTION TO QUIET TITLE. Actions may be brought against the state by any interested person for the purpose of quieting the title to any property against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes nor chargeable with any tax under this act. No such action shall be maintained where any proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor and the amount thereof may be determined. All parties interested in said transfer and in the taxability thereof shall be made parties thereto and any interested person who refuses to join as plaintiff therein may be made a defendant. Summons for the state in said action shall be served upon the state controller.

At any time after issue is joined in such action the court, on its own motion, or upon the motion of any interested party, may by order appoint and designate an inheritance tax appraiser to hear said matter and report to the court thereon and shall in such order fix a time and place for the hearing of said matter before said inheritance tax appraiser, and direct notice of such time and place to be given in such manner as the court shall deem proper, and shall refer said matter to said inheritance tax appraiser who shall have all of the powers of a referee of said court, including the powers prescribed in subdivision (1) of section sixteen of this act. The procedure subsequent to said

reference to said appraiser shall conform to the provisions of subdivision (1) and (2) of section sixteen of this act.

Should the court determine that the property described in the complaint is subject to the lien of said tax and that said property has been transferred within the meaning of this act, the court shall award affirmative relief to the state in said action, and judgment shall be rendered therein in favor of the state, ascertaining and determining the amount of said tax, and the person or persons liable therefor, and the property chargeable therewith or subject to lien therefor, and shall assess against such person or persons reasonable compensation for said inheritance tax appraiser and his necessary traveling and incidental expenses.

(4) VENUE. Actions under this section shall be commenced in the superior court of the county in which is situated any part of any real property against which any lien is sought to be enforced, or to which title is sought to be quieted against any lien, or claim of lien; but if in said action no lien against real property is sought to be enforced, the action shall be brought in the superior court of the county which has or which had jurisdiction of the administration of the estate of the decedent mentioned herein.

(5) NO FEES TO BE CHARGED CONTROLLER. No fee shall be charged said state controller by any public officer in this state for the filing or recording of any petition, lis pendens, decree or order, or for the taking of oaths or acknowledgments in any proceeding taken under this act; nor shall

any undertaking be required from or costs charged against the state controller or the State of California in any such proceeding.

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SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor; of which collection and payment he shall make a report, under oath, to the controller, between the first and fifteenth days of May and December of each year, stating for what estate paid, and in such form and containing such particulars as the controller may prescribe; and for all such taxes collected by him and not paid to the state treasurer by the first day of June and January of each year he shall pay interest at the rate of ten per centum per annum.

. . . . . .

SEC. 21. The state controller, whenever he shall be cited as a party in any proceeding or action to determine any tax under this act provided, or whenever he shall deem it necessary for the better enforcement of this act to make any special employment to secure evidence of evasion of said tax, or to commence or appear in any proceeding or action to determine any tax hereunder, may, by and with the consent and approval of the attorney general, make

such special employment or designate and employ counsel or attorney in or out of this state to represent him on behalf of the state, and, by and with such consent of the attorney general, he is hereby authorized to incur the necessary expense for such employment and any reasonable and necessary expense incident thereto. And the county treasurer is hereby authorized and directed to pay out of any funds which may be in his hands on account of this tax, on presentation of a sworn itemized account and on certificate of the state controller and attorney general, all expenses incurred as in this section above provided, but no expense for such special employment or legal services, up to and including the entry of the order of the court fixing the tax and the same becoming final, shall exceed ten per centum of the tax and penalties collected; *provided,* that all reasonable and necessary expenses incurred, in any legal action or proceeding in any court of this state or on any appeal therefrom, other than attorney's fees, including expense of serving processes and printing and preparing of necessary legal papers, may be allowed and paid in the manner above provided, even though no tax be recovered in such action or proceeding, and the limitations herein made shall not apply thereto.

§ 1024. Before any decree of distribution is made, all inheritance taxes due from the distributee and all personal property taxes due and payable by the estate must be paid.

§ 1202. At any time after the issuance of letters testamentary or of administration, any person interested in the estate, whether as heir, devisee, legatee, creditor, beneficiary under a trust, or as otherwise interested, or the state controller, may, in person or by attorney, serve upon the executor or administrator or trustee, or upon the latter's attorney, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of such service, a written request, stating that he desires special notice of the filing of any or all of the petitions, accounts or reports mentioned in section 1200 of this code, and giving the post-office address of the person making the same, or his attorney. Thereafter such person shall be entitled to notice as provided in said section 1200.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS RAY L. RILEY, CONTROLLER; W. H. H. GENTRY, INHERITANCE TAX ATTORNEY; AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY,
EXECUTOR, PETITIONER,
v.
RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS RAY L. RILEY, CONTROLLER; W. H. H. GENTRY, INHERITANCE TAX ATTORNEY; AND FRANK P. SPROUL, INHERITANCE TAX APPRAISER.

OPINIONS BELOW.

The majority and dissenting opinions of the Circuit Court of Appeals (R. 43–59) are reported in 89 F. (2d) 59. The opinion of the District Court for the District of Massachusetts (R. 26–37) is reported in 14 Federal Supplement 754.

JURISDICTION

The final decree of the Circuit Court of Appeals was entered March 15, 1937 (R. 59). The petition for a writ of certiorari was filed April 23, 1937, and was granted

May 24, 1937 (R. 61). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

We respectfully submit that the executor's statement of the questions presented (P. Brief, 2) is incorrect.

In its broader aspect the question is whether, where the tax officials of two States each assert that the decedent died domiciled in their State and that inheritance taxes are due their State on a resident basis, subdivision (26) of sec. 24 of the Judicial Code as amended January 20, 1936, may be construed to give a Federal district court jurisdiction of a suit by the executor to finally determine the question of the executor's or the estate's inheritance tax liability as between the two States and discharge the executor from further liability therefor by interpleading the tax officials of each of the two States; and if so, whether that subdivision so construed is constitutional.

In its narrower aspect the question is whether, in a case where the decedent's will was probated and the executor appointed in Massachusetts and thereafter the will is admitted to probate in ancillary proceedings in California and a different administrator with the will annexed there appointed, the Inheritance Tax Appraiser, (appointed by the California court at the time it admitted the will to probate, for the purpose of investigating and reporting to the court as to the amount of the California inheritance tax liability) the State Controller and the Inheritance Tax Attorney may be subjected, without their consent or the consent of the State, to the jurisdiction of the Federal District Court

of Massachusetts in an interpleader proceeding brought in that Court by the Massachusetts executor against them and the Massachusetts Tax Commissioner under subdivision (26) of sec. 24 of the Judicial Code as amended January 20, 1936, and enjoined from further performance of their official duties in connection with the pending tax determinative proceeding in the California court merely because those California respondents and the Massachusetts Tax Commissioner are each asserting that the decedent was domiciled in their respective State and that there is an inheritance tax due their State on such resident basis; and whether such a suit against the California respondents comes within the prohibition of the Eleventh Amendment.

The executor's erroneous statement of the questions is largely due to the fact that it has entirely ignored the California statutes and law, of which the Federal courts must take judicial notice, and in the light of which the allegations of the bill must be read.

FEDERAL STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statute involved is subdivision (26) of sec. 24 of the Judicial Code as amended by the Act of January 20, 1936 (49 Stat. 1096) and is set out in full at pages 7–9 of the Record (this will hereafter be referred to as the "Interpleader Act" or the "Act"). The more important parts are set forth here for convenience. It provides that the district court shall have original jurisdiction,—

> "(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person . . . being under

any obligation written or unwritten to the amount of $500 or more, if—

(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled . . . to any one or more of the benefits arising . . . by virtue of any such obligation; and

(ii) The complainant . . . (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

. . . . . .

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such . . . obligation until the further order of the court.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability."

BRIEF SUMMARY OF THE RESPONDENTS' PRINCIPAL POINTS.

A. THE INTERPLEADER ACT CANNOT BE CONSTRUED TO AUTHORIZE INTERPLEADER OF A DECEDENT'S INHERITANCE TAX OBLIGATION AS BETWEEN TWO STATES, EACH OF WHICH IS CLAIMING TO BE THE DOMICILIARY STATE.

1. "Bills of interpleader or bills in the nature of bills of interpleader" did not, in the meaning commonly attributed to them, include suits against a taxing entity to settle the question whether the plaintiff owed a tax to one or the other (p. 22).
2. It is not only essential to interpleader, but the Act expressly requires, that the parties defendant (the adverse claimants) be those who would be entitled to the plaintiff's tax obligation if their claims were established. But as the inheritance tax is owed to the State and as the State cannot be made a party defendant, either directly or through its officials, this essential cannot be complied with (p. 25).
3. It is not only essential to interpleader, but it is clearly necessary from the express language of the Act, that the court have such jurisdiction as is necessary to enable it to enter a decree validly discharging the plaintiff from further liability to the claimants. But the court has no jurisdiction over a State and therefore this essential cannot be complied with (p. 26).
4. To so construe the Act would necessitate imputing to Congress an intent to depart from its deliberate and settled policy, followed since 1910, of restricting the power of district courts to interfere with

the enforcement of state legislation and to impute an intent on the contrary to extend that power, notwithstanding the fact that Congress completely failed to express such an intention in terms unmistakably manifesting such a purpose (p. 27).

5. To so construe the Act would necessitate imputing to Congress an intent to provide a remedy for the dual domicile inheritance tax problems, which would probably not be acceptable to the States, and the constitutionality of which would be of grave doubt, without using any language, either in the Act itself or in its legislative history, to indicate that it had any intent so to do (p. 31).
6. To so construe the Act would violate the well established principle that a construction of a statute which raises a grave and doubtful constitutional question will not be adopted where some other is open to the court (p. 37).
7. To so construe the Act would necessarily impute to Congress an intent to circumvent the Eleventh Amendment, notwithstanding the fact that the legislative history of the Act shows clearly that Congress did not have in mind interpleader of inheritance tax or any other tax obligations (p. 41).
8. To so construe the Act would necessitate giving to the word "claimants" as used in the Act a different meaning, when the interpleader involved an inheritance tax obligation, than it had when the interpleader involved an obligation to an individual or corporation. This is so because the claimants interpleaded in the case of an inheritance tax obligation would not be the persons to whom the

obligation would be owed if their claims were established (p. 25).

9. To so construe the Act would necessitate disregarding, in a case where the interpleader involved an inheritance tax obligation, the express requirement that the parties interpleaded be those who are "claiming *to be entitled*" to the obligation, *i. e.* claiming personal ownership of it (p. 25).
10. If the Act were so construed, it would necessarily follow that a district court would have jurisdiction to settle a boundary dispute as between two States on an interpleader suit brought by a taxpayer whose property or domicile fell within one State or the other, depending upon the proper location of the boundary. Can it be that Congress has thus unwittingly taken from this Court its exclusive jurisdiction of such disputes (p. 54)?

B. The Case Does Not Come Within the Principle of *Ex parte Young*, and Such Cases.

1. The present suit, in order to be maintained against the California respondents, must be what is known in general equity jurisprudence as an interpleader suit (pp. 21, 22).
2. Interpleader suits rest on entirely different equitable principles than do suits such as were involved in the *Young* and other cases (p. 42).
3. In the *Young* and like cases the sole purpose of the suit is to prevent the defendant from doing something which he has no right to do; whereas in interpleader the purpose of the suit is to enable the plaintiff to be discharged in one action from an admitted liability claimed by two or more persons,

and to *require* those persons *to make their claims* at the same time in the same court (p. 43).

4. In the *Young* and like cases, the only party against which alone the relief asked is the state official, who is, for the purposes of the suit, stripped of his official or representative character; whereas, in interpleader the relief asked is relief from an obligation owed to State and therefore the only real party against which alone in fact the relief is asked and against which the judgment or decree effectively operates must be the State itself (p. 44).
5. In order for the *Young* and like cases to apply, it must be alleged that the California respondents are threatening a violation of the Fourteenth Amendment, *i. e.,* they must be threatening to do something which, if the plaintiff's contentions were correct, would violate that Amendment. But in the present case there is no allegation that domicile was not in California, or that they are acting arbitrarily or wrongfully in so contending, or that a determination of such a domicile would be erroneous. In the absence of such an allegation it must be assumed that there is or may be substantial evidence to support such a finding (p. 46).
6. Even if the taxes of each State were assessed and collected on the basis of its being found by its courts to be the domiciliary State, it would not follow, *ipso facto,* that one or the other State was violating the Fourteenth Amendment (p. 46).
7. The courts of one sovereign State are not bound by the determination of the jurisdictional fact of

domicile by the courts of another sovereign State (p. 48).

8. The Constitution does not guarantee uniformity of decision as to such a fact by the courts of two sovereign States (p. 48).
9. The States did not, by the Constitution, commit to the Federal Government the power to endow the Federal courts with the power to determine the jurisdictional fact of domicile for inheritance tax purposes or any other purpose where the rights of the State claiming jurisdiction would be affected (p. 49).

C. In Any Event the District Court had no Jurisdiction to Maintain the Present Suit Against These California Respondents.

1. The allegations of the bill must be read in the light of the California statutes and laws (p. 12).
2. The entire matter of determining and fixing the inheritance tax liability of the estate is a court proceeding (p. 12).
3. This court proceeding began with the appointment of Mr. Sproul as Inheritance Tax Appraiser by the court in which the probate proceedings were had (p. 13).
4. The Appraiser's only function is to act as an officer of the court with the powers of a referee to examine and report his determination to the court, which is then treated as an auditor's report in the subsequent hearing before the court, of which all parties interested are given notice (p. 13).
5. The tax liability is fixed by the judgment of the court, entered after that hearing, and the duty of

collecting the tax is on the County Treasurer (not one of the present respondents) (p. 13).

6. The inheritance tax obligation is owed to the State (p. 13).
7. The Controller comes into the court proceeding only after the Appraiser has filed his report and notice thereof has been given to the parties (p. 13).
8. The Inheritance Tax Attorney is merely the official attorney of the Controller (p. 13).
9. The Interpleader Act authorizes injunctions only against claimants, and none of these California respondents can be claimants within the meaning of the Act for none of them can be entitled to the tax obligation (p. 15).
10. The Inheritance Tax Appraiser may not be enjoined for the additional reason that he is an officer of the court. Section 265 of the Judicial Code prohibits injunctions against officers of state courts, and the Interpleader Act creates no exception to that provision. Nothing that any of the California respondents can do would operate to deprive plaintiff of its constitutional rights (pp. 15, 16).
11. It is settled that where collection of a tax cannot be enforced except by a suit in court, of which the taxpayer has notice, and in which all rights to contest the legality of the tax assessed are open to him as a defense, the taxpayer is not deprived of his property without due process of law (p. 50).
12. It is well established that due process is satisfied if its usual requisites, the right to a full and fair

hearing of its claim, are present at any stage of a tax proceeding (p. 17).

13. The Federal court has no jurisdiction to enjoin collection of state taxes when the plaintiff, as here, has not exhausted the state administrative remedies (p. 17).
14. The doctrine of *Ex parte Young* would not authorize an injunction against the California respondents, even if the suit were for the sole purpose of enjoining them, for the entire California tax proceeding is a proceeding in court (p. 36).

AS TO DIVISION I OF THE EXECUTOR'S ARGUMENT.

The admission of the will to probate in California in ancillary proceedings rather than in original proceedings has no bearing upon the question of domicile for the purpose of the California inheritance tax proceedings. *Estate of Bloom,* 213 Cal. 575. The executor has studiously refrained in the present case from taking any position either way on the question of domicile. At page 11 of its Brief it says that it seems clear that the decedent was domiciled "*either* in Massachusetts or California." The allegations and prayers of its bill are all framed on the theory that the executor is a disinterested stakeholder on this point. Indeed, such a position on its part was absolutely necessary in order to enable it to make out a case of interpleader, even on its own theory. If it had alleged that the decedent was a resident of Massachusetts and not of California, it would be in effect alleging that Massachusetts was entitled to the inheritance tax based on domicile and therefore would be interpleading Mr. Long as the representative of Massachusetts not as an individual threatening

to collect an unconstitutional tax, and the claimants interpleaded would, on the executor's theory, be the California individuals on the one side and the State of Massachusetts on the other, whereas under the Act all of the claimants must be "citizens of different states." It does not authorize the interpleader of a citizen of one State against another State. Nor would its suit even come within the category of a bill of interpleader or a bill in the nature of interpleader. A person who admits liability to A, but denies any liability to B, cannot interplead A and B even by a bill in the nature of interpleader.

The executor refers particularly to its allegation that the California respondents are determining the domicile in California and "are asserting and have threatened and are about to assess and attempt to collect" taxes based upon such determination. This allegation, must, however, be read in the light of the California statutes and law as to the powers and functions of these officials. When so read, it will appear that it is no part of the powers or functions of *any* of the California respondents to determine the decedent's domicile, or to assess or collect the tax.

The entire matter of determining and fixing the tax liability of the estate is a court proceeding which began, in the Hunt estate, with the appointment of Mr. Sproul as Inheritance Tax Appraiser by the Superior Court in which the probate proceedings were had. His only function is to act as an officer of the court with the powers of a referee and examine into the facts and make his determination as to the amount of the tax. His appointment is an indispensable step in every probate proceeding, and he is an essential part of the court.

Estate of Haskins, 170 Cal. 267; *Estate of Brown,* 196 Cal. 114. The tax proceeding begins with his appointment. After this report is filed in the court the Controller and all other persons interested are notified, and if any objections are filed, the matter is set down for hearing before the court, at which the report is treated as prima facie evidence, like an auditor's report. The Inheritance Tax Attorney is merely the official attorney for the Controller and would represent the Controller at such hearing. After hearing, the court makes its order fixing the tax, which order has the force and effect of a judgment in a civil action with all rights of appeal. When the court's judgment has become final, it is then the duty of the County Treasurer to collect the tax and pay the same to the State Treasurer. (The pertinent California statutes as they stood at the time of decedent's death in 1935 are set forth in the Appendix to this brief.)

It thus appears that the allegation that the California respondents have determined that Hunt died domiciled in California amounts to nothing more than an assertion that they have come to that conclusion in their own minds, and not that there has been any official determination of domicile; and that the allegation that they are threatening and are about to assess and attempt to collect the tax amounts to nothing more than an assertion that in the pending court proceedings they will, when the time comes, contend that the *court* should determine the domicile to be in California and that the court should fix the tax accordingly.

This examination and analysis of the California law is fundamental to a proper understanding of the issues

in this case, and particularly because it cuts the ground from under several of the most important parts of the executor's arguments,—*e. g.* that the California respondents are "claimants" within the meaning of the Act (P. Brief, 27); that they are "acting beyond their authority as state officials" (P. Brief, 24); that, in "exercising their power of office" they "are mistakenly and illegally abusing that power in a way to deprive the Hunt Estate of its constitutional rights" (P. Brief, 25); that they are "in possession of state power and attempting to use that power to the doing of wrongs which the Fourteenth Amendment forbids" (P. Brief, 30, 32); that they are officers whose actions are "immediately endangering the plaintiff's constitutional rights" (P. Brief, 31); that their position "in no way differs from that of the Virginia collector in the *Poindexter* case" who, in *seizing the property* of the taxpayer was held to have ceased to be an officer of the law and became a private wrongdoer (P. Brief, 37); and many others.

Perhaps it was in view of the California law that the executor in its Brief has started to mollify this allegation to some extent. In its Statement of the Facts (P. Brief, 5) it says that they *"assert* an inheritance tax *due that state* based on their *claim* of domicile." Does this mean any more than that they have come to the conclusion in their own minds that the decedent was domiciled in California and that in the pending tax proceedings in the California court they intend to take that position before that court *when the time comes* for them to report to or enter an appearance in that proceeding? Also, at page 10 the executor now says that they "are

determining the domicile in California," not they "have determined" it to be there. This language certainly connotes a pending process of the mind and not a past determination. It is a recognition of the fact that the Inheritance Tax Appraiser has not yet made his report to the Court, and therefore cannot yet have made his determination of domicile.

In view of their limited powers and functions in connection with any tax proceedings in California it becomes clear that none of the California respondents can be "claimants" within the meaning of the Act. To be such a claimant the person must be claiming "to be entitled" to the tax. At pages 16 to 17 of its Brief the executor purports, by the use of italics, to set forth the jurisdictional requirements of a suit under the Act, but it fails to italicize these quoted words which are equally important as a jurisdictional requirement. The tax is owed to the State (sec. 22 of the Cal. Tax Act) and none of the California respondents are entitled to any benefit arising by virtue of that tax obligation.

The Inheritance Tax Appraiser does not determine the domicile for the purpose of the tax. Such determination is made only by the court after notice to all interested parties and a hearing. Neither can he assess or collect the tax. The court judgment fixes the tax and the county treasurer (not a party), then collects it for the States.

Not only does it appear that he cannot be a "claimant" within Interpleader Act, but it appears that he is not such an official as could be enjoined by the Federal court, either under the doctrine of the cases relied on by

the executor or otherwise. Sec. 265 of the Judicial Code prohibits injunctions to stay "proceedings in any court of a State" except in connection with bankruptcy proceedings. This section includes all steps taken or which may be taken in the state court *or by its officers*. *Hill* v. *Martin,* 296 U. S. 393, 403. The Interpleader Act authorizes injunctions *only* against "claimants" enjoining them "from instituting or prosecuting" any suit (R. 4). The Appraiser can neither institute nor prosecute any suit or proceeding, nor does he claim to be entitled to any tax or to any benefit to be derived from the tax obligation.

Neither the Controller nor the Inheritance Tax Attorney can be held to be a "claimant" within the Act. Neither claims nor can claim "to be entitled" to the tax obligation or any benefit to be derived therefrom. Neither can fix or assess the tax. The tax liability is fixed only by the judgment of the California court after notice and hearing. It is the function of the county treasurer (not a party), acting for the State, to collect the tax. In fact the Controller where, as here, a will has been probated in the State and the Inheritance Tax Appraiser appointed, does not even come into the picture until *after* the Appraiser's report has been filed and the court has thereafter notified the Controller, and when he comes in, he is merely a party to the proceeding for the determination of whether there is any tax liability and the amount of such liability. His powers and duties are not like those of the officials who have been enjoined in the tax injunction suits relied on by the executor. The Inheritance Tax Attorney comes into the picture only as the Controller's attorney.

It further appears that none of the California respondents can do anything, or take any action, or even institute any suit or proceeding which would deprive the executor or the Hunt estate of its constitutional rights or endanger such rights. The executor makes no claim that the California laws are invalid, or that any of the California respondents are acting or threatening to act arbitrarily and without evidence, or that their conclusion, or determination if you prefer to call it that, that the decedent was domiciled in California is arbitrary and unsupported by evidence. Nothing any of these California respondents can do will operate to endanger the executor's constitutional rights. It is the judgment of the court and not the Appraiser's determination "which finally fixes the liability to pay the tax," and the estate has a full opportunity to be heard before such judgment. There is no denial of due process. *Nickey* v. *Mississippi,* 292 U. S. 393, 396.

It is well established that due process is satisfied if its usual requisites, the right to a full and fair hearing of its claim, are present at any stage of a tax proceeding. *Pittsburgh etc. Ry. Co.* v. *Board of Public Works,* 172 U. S. 32, 45. Even if these officers were tax assessors the Federal court may not interfere to stop them from performing their statutory duty for fear they may perform it wrongfully. *First Nat. Bank* v. *Albright,* 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699. *A fortiori* a state officer whose only function is to press the contentions of the State before the tax determining body sometime in the future may not be enjoined. Nor has the Federal court jurisdiction to enjoin the collection of state taxes alleged to violate the Federal Constitution or laws when the

plaintiff, as here, has not exhausted the state administrative remedies. *First Nat. Bank* v. *Weld County*, 264 U. S. 450; *Gorham Mfg. Co.* v. *Tax Commission*, 266 U. S. 265.

While it is true that intangibles are subject to the imposition of an inheritance tax only by the domiciliary state and that a person cannot have more than one domicile at a time, it is equally well established that where the jurisdiction of a sovereignty depends upon domicile, each sovereignty may determine that jurisdictional fact for itself and is not bound by the determination of that fact by another sovereignty. It is also equally true that the Constitution does not guarantee uniformity of decision as to such facts by the courts of two sovereign states (these points will be developed further at page 50 *infra*).

The executor is not in the position of "helplessly watching two wholly inconsistent attempts to collect taxes" from the estate. It cannot be assumed that the California court will make an erroneous determination of domicile. (The domicile for California tax purposes can be determined *only* by the California court, and not by any of the California respondents.) We know of no instances where an estate has been required by the California court having jurisdiction of the estate to pay an inheritance tax based on any erroneous determination of domicile. On the contrary, it must be assumed that the courts of each state, on the same evidence will reach the same, and not inconsistent, conclusions as to the domicile.

Because the Pennsylvania and New Jersey courts each found the domicile to be in their own State in the Dorrance case, it does not follow, nor is it to be assumed,

that in every instance a state court will find the domicile to be in its own State. See *Matter of Trowbridge*, 266 N. Y. 283. In any event the executor can by proper procedure preserve his rights in each court and in case of an erroneous decision as to the domicile take the necessary steps to have each case reviewed by this Court. There is nothing in the *Dorrance* litigation to indicate that this Court would not grant a review. *Dorrance* v. *Pennsylvania*, 287 U. S. 660, certainly indicates that a review would be granted in such a case. See also *Johnson Oil Co.* v. *Oklahoma*, 290 U. S. 158.

The present suit is neither a proper nor a satisfactory method of determining conflicting domicile claims. It is unwarranted in law and replete with the possibility of hardship from the States' point of view. This is evident from the reports of the Committee of the National Tax Association (P. Brief, 14).

That Report, made in 1935, contains the following comment as to a suggestion that Congress enlarge the jurisdiction of the Federal district courts to cover such cases:

> "It has been suggested that Congress be induced to pass legislation specifically enlarging the jurisdiction of Federal District Courts to include such cases of disputed domicile in tax matters. There is grave doubt whether the Federal Constitution confers upon the Federal Government the power to pass legislation under which two or more states may be joined in a proceeding in a Federal court for the purpose of determining the domicile of a decedent. *Each State involved would say that when it subscribed to the Federal Constitution it did not surrender to the Federal Government its power to say*

whether a decedent was domiciled within its borders; that this is purely a matter for state determination except that, if a state commits a wrong for which redress may be had under the Federal Constitution, the remedy is by action of the executor against the offending state by certiorari from the highest state court to the United States Supreme Court."

We suggest that it is unlikely, in view of the fact that Massachusetts strenuously objected to the jurisdiction of this Court in the original proceedings brought by Texas in the matter of the Green estate, that its Tax Commissioner would be taking the position he is now taking in the present case had it been brought in the Federal court in California instead of in Massachusetts.

The Report also pointed out that "many of the States would probably take the view that any decision as to domicile is peculiarly a state question and would be unwilling to surrender the power of determination to a Federal court. Moreover, there is the recurring difficulty as to whether all of the States claiming domicile could be made parties, and if they were not parties, they might feel that they ought not to be bound by the litigation."

Is any solution fair to the States which subjects them to being dragged, willy nilly, into whichever of two or more Federal district courts an executor may select to try out this vital issue of domicile, the number of possible choices depending upon the number of different States claiming a tax? Is any solution fair in which the executor's costs, including counsel fees, would come out of the amount of the tax due to the prevailing State?

[In interpleader the plaintiff's costs customarily come out of the property or fund in dispute. *Mutual Life Ins. Co.* v. *Bondurant,* 27 F. (2) 464, 465, certiorari denied, 278 U. S. 630; *Mass. Mutual Life Ins. Co.* v. *Morris,* 61 F. (2) 104. (See also prayer 7 of the bill (R. 6)).] Is it reasonable to impute to Congress an intent to provide such a solution when there is nothing in its legislative history to indicate that Congress had any idea that it was dealing with such a problem or providing a solution for it?

While the States might agree on the desirability of there being one forum for settling domicile for inheritance tax purposes, it would require a very considerable discussion and negotiation before they could agree as to where or what that forum is to be, or agree as to who is to have the authority to select the forum in a particular case. Surely it is not within the province of a court to so construe an act of Congress as to give to executors the power to select that forum, particularly when there is nothing in the language or history of the Act to indicate that Congress ever intended to give them such power, or even contemplated that it might be held to have so done. Certainly this is not one of the matters as to which the States gave Congress the power to legislate. A *fortiori* "judicial legislation" to that effect cannot be justified.

AS TO DIVISION II OF THE EXECUTOR'S ARGUMENT.

The present bill does not state a case within the *fair intendment* of the Interpleader Act. While it is true that the Act was intended to afford relief in cases outside of the earlier interpleader statute, and to include bills in the nature of interpleader, it is equally clear that there

is nothing in the Act or its history to evidence any intention to include any suits other than such suits as were commonly known, in general equity jurisprudence, to come within the scope of bills of interpleader or bills in the nature of interpleader.

The act, by its terms, applies only to "bills of interpleader or bills in the nature of interpleader." The report of the Senate Committee on the Judiciary (*infra*, pp. 63–77) makes it clear that the inclusion of bills in the nature of interpleader was intended to cover only such suits as ordinarily come within that category. As stated in Lawrence on Equity Jurisprudence, at sec. 929,

> "A bill in the nature of interpleader . . . is one in which, in addition to the determination of the controversy between the defendants, the plaintiff asks some other equitable relief by way of interest in the subject matter. *In other respects it is to be administered upon the same general principles as interpleader proper.*"

In *Sanders* v. *Fertilizer Works*, 292 U. S. 190, 199, this Court pointed out that the Act, as it stood before the 1936 Amendment, "authorized only an ordinary form of equitable relief." That statement is equally applicable to the present Act for bills in the nature of interpleader were only ordinary forms of equitable relief. The purpose of Congress in expressly including bills in the nature of interpleader in the 1936 Amendment is stated in the Senate Committee Report as follows: "The existing statutory language may be sufficiently broad to include bills in the nature of bills of interpleader, but one district judge has held to the contrary. *Therefore*, they have been expressly included in the proposed sta-

tute." (*infra,* p. 70). In *Caminetti* v. *United States,* 242 U. S. 470, cited by the executor in this connection (P. Brief 15) this Court said at pages 485–6: "Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them."

Interpleader of two taxing jurisdictions, either by bills of interpleader or by bills in the nature of interpleader, was far from being a commonly recognized form of relief in general equity jurisprudence. The better view was that neither would lie to determine to which of two taxing entities a taxpayer was liable for the tax upon his intangible personal property. *Macy* v. *Nantucket,* 121 Mass. 351; *Welch* v. *Boston,* 208 Mass. 326, 328; 25 Harvard Law Review, 174, 175–6. Pomeroy's "Equity Jurisprudence," 4th Edition, vol. 4, sec. 1467, indicates its disapproval of the cases sustaining interpleader in such instance. Considerations of public policy are against the entertaining of such bills. In the *Macy* case the only question was whether a *bill in the nature of interpleader* would ~~be.~~ lie The parts of the opinion in the *Welch* case to which the executor refers (P. Brief, 18) related only to the contention that a strict bill of interpleader would lie. The Massachusetts court then indicated that, *apart from those considerations,* it was at least very doubtful whether the bill could be maintained as a bill in the nature of interpleader, and proceeded to advance cogent reasons why equity should not thus interfere with the collection of taxes. Considerations of public policy and of the principle that the prompt collection of revenues should not be readily interfered with furnishes strong reasons against the enter-

taining of interpleader suits, or suits in the nature of interpleader, in such cases.

It has been the general policy of our law "that the sovereign's revenues should not be held up by injunction. *Smallwood* v. *Gallardo,* 275 U. S. 56, 61; Porto Rico Tax Appeals, 16 F. (2) 545, 548. The processing tax cases created no new exception. The present case is far from one which would fall within the category of those cases. *First National Bank* v. *Albright,* 208 U. S. 548; *Dalton Adding Machine Co.* v. *State Corporation Commission,* 236 U. S. 699. See also *First National Bank* v. *Weld County,* 264 U. S. 450; *Gorham Mfg. Co.* v. *Tax Commission,* 266 U. S. 265. If the executor should be aggrieved by a determination by the California court of a California domicile, it has an adequate remedy to have that error corrected, and if it had properly raised the Federal question in the California court, it could undoubtedly obtain a review by this Court. *Dorrance* v. *Pennsylvania,* 287 U. S. 660 (semble); *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158. This is not a case where it would have no adequate remedy at law. Furthermore, in California this remedy could *all be availed of before* the executor could be required to pay any tax. See sec. 18 of the California Tax Act (*infra,* p. ~~42~~ 52).

The principle, relied upon by the executor, that a construction which causes grave public injury or which renders the statute inefficient should be avoided, has absolutely no application in the present case. It is only where an Act, by the ordinary meaning of its language, *plainly* was *intended* to cover a certain situation, that a construction to the effect that it did not cover such a situation can be said to *occasion* great in-

convenience, or produce inequality and injustice, or *cause* injury, or render the statute inefficient. By no reasonable stretch of the imagination can it be said that a statute, which authorizes only ordinary suits in the nature of interpleader against such claimants as are actually "claiming *to be entitled*" to the obligation in question and are "citizens of different States," can be construed as *fairly intended* to authorize such suits against persons who are *not* claiming to be entitled to the obligation, but are at most merely claiming that their principal, over which the court could not have or be given jurisdiction, is entitled to it, and where the *real* claimants,—*i. e.* the parties to which the obligation would be owed if established as claimed—are *not* citizens of different States! There is no similarily in character, principle or otherwise between the cases cited by the executor and the present case.

A mere reading of the Act demonstrates that the present bill is *not* within its scope or fair intendment. A study of its history confirms this conclusion.

From the very nature and purpose of interpleader or suits in the nature of interpleader it is *essential* that the parties impleaded—the parties defendant—be those who would be entitled to the plaintiff's obligation if their claim to it were established. The plaintiff comes into court "upon the most obvious equity to insist that those persons claiming *that to which* he makes no claim should settle that contest among themselves and not with him, or at his expense and hazard." Story, Equity Jurisprudence, 14th Ed., sec. 1117. The purpose of the remedy is to give the plaintiff in one suit a discharge from his obligation where there is a dispute as to which of two or more parties is entitled to that obligation.

Indeed, the Act expressly provides that the court "*shall discharge* the complainant from further liability" (R. 8).

Inheritance taxes are, in most if not all cases, owed to the States. Only the States themselves are *entitled* to the obligation. In any event that is so in California. See sec. 22 of the California Tax Act (*infra*, p. 62).

It must follow that if interpleader is to be invoked to determine to which one of two or more States a decedent's estate is indebted with respect to its inheritance tax obligation based upon domicile, the States themselves are not only the real parties in interest but are the necessary parties defendant. The plaintiff must be neutral on the issue of whether such tax is owed to State A or State B. That is the real controversy, and in order to determine that controversy, it is self-evident that the court must have before it the real parties in interest, which can be only the States.

Not alone do the general principles applicable to interpleader require that the claimants impleaded be the real parties who would be entitled to the obligation if their claims were established. The language of the Act itself is clear and unequivocal to that effect. The "claimants" must be "claiming *to be entitled*" to the obligation. Those "claimants" must be "citizens of different States." Those "claimants" must be the parties defendant.

In the case of California and of most States, the inheritance tax is an obligation to which only the State is entitled. The State, through its proper officials, claims that the decedent was domiciled in that State and that an inheritance tax based on that domicile is due to it accordingly. It must follow that the State can

be the only "claimant" in such a case within the meaning of the Act. The official cannot be such "claimant" for he cannot be claiming "to be entitled" to the obligation. In the present case the executor does not even argue that the California respondents or even the Massachusetts respondents, are claiming "to be entitled" to the claimed tax obligation. In its Statement at page 5 it says that the California respondents "assert an inheritance tax *due that state* based on their claim of domicile in California." As we have already pointed out, (*supra,* p. 13) that is all that the allegations of the bill amounted to, when read in the light of the California law, and this is now confirmed by the executor. Their "claim of domicile in California" is not a claim that *they are entitled* to an obligation. Their only claim is that their *State* is entitled to the tax obligation in question. Neither in ordinary equity jurisprudence nor under the Interpleader Act do bills of interpleader or bills in the nature of interpleader lie against claimants who are not claiming *to be entitled* to the obligation in question, but are only claiming that their principal or someone else is entitled to that obligation.

Not only would it do violence to the plain language of the Act to construe it as including within its scope interpleader of state tax officials, but it would impute to Congress an intent to *extend* the power of the district courts to interfere with the enforcement of state legislation notwithstanding that its uniform policy as shown by its other legislation since 1910 had been to *cut down* such power.

In 1910 Congress recognized that interference by interlocutory injunction with the enforcement of state

legislation was a matter of grave concern which should require an adequate hearing and full deliberation calling for the presence of a court of three judges, and the review of which on appeal should be had as speedily as possible, (sec. 266, Judicial Code, 28 U. S. C., sec. 380) *Stratton* v. *St. Louis & Southwestern Ry.* 282 U. S. 10, 14, 15. The injunction provision of the Interpleader Act is not materially different from what it was before the 1936 amendment. It then created no exception to the policy established by sec. 266. Its re-enactment in substantially the same language in the 1936 amendment cannot be held to create now such an exception. In 1934 Congress further limited the district courts power of interference with the enforcement of state legislation by withdrawing from the jurisdiction of the district courts suits to enjoin the enforcement by State administrative boards affecting public utility rates except in certain cases. (Act of May 14, 1934, 48 Stat. 775).

In the face of such a doubt as to whether such a tax liability could be interpleaded as a matter of general equity jurisprudence, and in view of such an established policy of the Congress, it is not reasonable to construe the Interpleader Act as authorizing interpleader of a plaintiff's tax liability as between two taxing jurisdictions, much less the interpleading of his tax liability as between two States. Had Congress had any intent to reverse its policy and *enlarge* the power of a single judge to interfere with the enforcement of state legislation, and intended that alleged conflicting inheritance tax claims were to come within the purview of the Interpleader Act, with the attendant result that the States' tax officials might be temporarily enjoined

by a single judge, "It would have expressed that intention in terms befitting such a departure,—that is to say, in terms unmistakably manifesting a purpose to make" this Interpleader Act apply to such cases. An intention to depart from a course or policy thus deliberately settled is not lightly to be presumed." See *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 384, 390–1.

The recent action of Congress in passing the Act of August 21, 1937, withdrawing from the district courts jurisdiction of all tax injunction suits under subdivision (1) of sec. 24 of the Judicial Code, except in certain cases, is a *further confirmation of its general policy* of restricting the power of the Federal courts to interfere by injunction with the enforcement of state legislation. Congress recognized that the existing practice of the Federal courts in entertaining tax injunction suits under subdivision (1) resulted in serious disruption of state and county finances, and that in many instances States were compelled to compromise these suits and to lose a substantial portion of their taxes without a judicial examination into the real merits of the controversy. It was the compelling needs of the States for a more prompt disposition of such tax controversies which impelled the Committee on Judiciary to recommend the prompt passage of that Act (Senate Report No. 1035, 75th Congress, 1st Sess.) The significance of this legislation is that it renders it hardly conceivable that Congress, within only about a year before, could have been intending to *enlarge* the jurisdiction of the district courts (*i. e.* make it nation wide) to interfere with the assessment and collection of state taxes and to empower single judges to issue interlocutory injunctions and *ex parte* restraining orders pre-

venting such assessment or collection. Such an intent cannot be imputed in the absence of anything clearly manifesting such an intent!

The *Dorrance* case was then pending. The National Tax Association had appointed a Committee in 1934 to study the problem of dual domicile in death taxation. That Committee had made a report in 1935, which had received wide publicity. This report discussed five suggested solutions, one of which was the Federal Declaratory Judgment Act, and the other was "legislation by Congress enlarging the jurisdiction of the Federal courts." These two suggestions of Federal legislation were rejected by that Committee. The suggestion of enlarging the jurisdiction of the district courts was rejected because there was grave doubt whether it would be constitutional and also because it would not be a satisfactory one from the States' point of view. Furthermore, there was before each of the Judiciary Committees at the time it was considering the 1936 amendment of the Interpleader Act a bill to further restrict the power of district courts by withdrawing from their jurisdiction suits to enjoin, suspend or restrain the assessment, levy or collection of state taxes, except in certain cases. (S. 2267; H. R. 6739, 75th Cong. 1st Sess.)*

In the face of these facts is it within the bounds of reason to so construe the 1936 amendment as to impute to Congress an intent to provide a remedy for these dual domicile inheritance tax problems which would prob-

* Although these bills were not reported out by these Committees at that session, the bill which became the Act of August 21, 1937 at the next session was almost identical with the parts of S. 2267 and H. R. 6739 referred to.

ably not be acceptable to the States, the constitutionality of which would have been in grave doubt, and which would *enlarge* rather than *cut down* the power of district courts to enjoin the collection of State taxes and thus be contrary to the established policy of Congress and the policy underlying S. 2267 and H. R. 6739, when there is not a word in the Act itself nor any utterance in its legislative history or in any writings of its author, written or published *before* the Act was passed to indicate that the author or any member of Congress ever contemplated that it might be so construed? To do so would necessarily imply, either an intentional silence on their part (which is unthinkable), or an amazing lack of legal acumen on the part of the author and every lawyer in Congress.

The executor apparently considers that the saving clause of the Act of August 21, 1937, was intended to except the pending suit under the Interpleader Act (P. Brief, 18). Therein it misconceives the scope and effect of Act of August 21, 1937. That Act does not deal with or affect the jurisdiction or powers of district courts under the Interpleader Act, which is subdivision (26) of sec. 24 of the Judicial Code. It deals only with subdivision (1) of sec. 24. Its only significance (which we submit is of *great* importance) is as pointed out above (*supra*, p. 29).

At pages 18–21 of its Brief the executor attempts to establish the point that it, as the Massachusetts executor, sufficiently qualifies as a complainant within the meaning of the Interpleader Act. We submit that it fails to do this. Although the taxing statutes in terms impose liability for the tax upon "all administrators,

executors, and trustees" of the estate,* yet the representatives referred in such statutes are only those who are the legal representatives of the estate in the particular State. *Goodrich* v. *Rochester Trust & Safe Deposit Co.*, 173 App. Div. (N. Y.) 577, 160 N. Y. Supp. 454. The Massachusetts executor is under no legal obligation or liability to pay the California inheritance tax, and could not be sued for it. *Dewey* v. *Des Moines*, 173 U. S. 193; *Colorado* v. *Harbeck*, 232 N. Y. 71; *In re Martin's Estate*, 240 N. Y. Supp. 393, aff'd 255 N. Y. 359; *People* v. *Union Trust Co.*, 255 Ill. 168. See also *Moore* v. *Mitchell*, 281 U. S. 18; and *Baldwin* v. *Missouri*, 281 U. S. 586 @ 598. The only legal representative of the Hunt estate personally liable for the California tax is the Security-First National Bank of Los Angeles, the administrator with the will annexed. The tax must be deducted by such administrator from the California assets before distribution.

The decision in the *Harbeck* case has not been affected by *Milwaukee County* v. *M. E. White Co.*, 296 U. S. 268. In the *Harbeck* case the suit was against the New York executrix and legatees to recover the total tax from the executrix, and to collect from each legatee defendant the amount assessed upon his legacy. None of the defendants had appeared in the Colorado tax proceedings. An administrator with the will annexed had been appointed in Colorado. The court held that "no personal liability based upon the receipt of a legacy arises except under the provisions of the Colorado statute that the person to whom the property is transferred shall be

*The provision of the California Tax Act is substantially identical. See sec. 3 (P. Brief 58).

personally liable for the tax until its payment and *that liability is purely local and statutory.*" The taxes were not debts or contracts. No contractual or quasi-contractual obligation to pay arose out of the assessment of the tax. In the *Milwaukee County* case a judgment had been "duly recovered and entered" in Wisconsin against the White Company, and the only question was whether that *judgment* was entitled to full faith and credit. The question certified stated that the Wisconsin judgment was a "valid judgment" which necessarily implies that it had proper jurisdiction over the White Company to enter the judgment.

No valid tax judgment could be entered by the California court against the executor, for that court would have no jurisdiction over the executor. Nor would such a tax judgment create any lien entitled to execution in Massachusetts. See the *Milwaukee County* case at p. 276. That decision establishes only that a tax *judgment* against a defendant entered by a court *having jurisdiction over* the defendant is entitled, under the full faith and credit clause, to be enforced in another State *against that* defendant.

At pages 21 to 23 of its Brief the executor recognizes that in interpleader the court must be able to discharge the executor from its acknowledged obligation, and attempts to show that the district court could, in effect at least, do so in such an interpleader suit as the present one. Of course this is one of the many points which the executor must establish to justify its construction of the Act.

It is immaterial whether or not there would be any likelihood in the present case of there being any controversy between the executor and the prevailing re-

spondents as to the amount of the tax liability. The real question is, could the district court have jurisdiction over such a controversy if it did arise? If it couldn't, then the Act cannot be construed to include interpleader of an executor's inheritance tax liability as between two States. Not even the executor would contend that such a controversy was not a controversy between the executor and the domiciliary State! A proceeding only to determine domicile and not to discharge the complainant from all further liability would neither be interpleader nor a proceeding in the nature of interpleader within any known principle of equity jurisprudence, and therefore not within the scope of the Act. It would be only a proceeding in the nature of such proceedings as are authorized by declaratory judgment acts, statutory proceedings which are not known in the common law or in equity jurisprudence.

The executor's argument (P. Brief, 23–25) to the effect that under the doctrine of *Ex parte Young,* 209 U. S. 123, the Interpleader Act authorizes the impleading of state officers to plead the claims of their States will be dealt with in our comments as to Division III of the executor's Brief.

The California respondents make no claim that the present suit comes within the scope of sec. 266 of the Judicial Code, or that *if* the Interpleader Act authorized the present suit and, *if* so construed, it were constitutional, and *if* they could be held to be "claimants" within the meaning of the Act, a single judge could not issue an injunction.

The Circuit Court of Appeals had full power to make the order which it entered, to wit: "That the order of the District Court granting a temporary injunction is

vacated and the case is remanded to that court with directions to dismiss the bill of complaint for want of jurisdiction" (R. 57). The District Court made two orders or decrees, one granting the injunction (R. 24) and the other denying the motion to dismiss (R. 23). The California respondents appealed from both. The C. C. A., however, dealt *only* with the appeal from the "decree granting an interlocutory injunction" (R. 43). This appeal raised the question of jurisdiction of the District Court over these California respondents. On such an appeal the Circuit Court of Appeals may direct a bill to be dismissed if it appears that the complainant was not entitled to maintain its suit. *Metropolitan Water Co.* v. *Drainage District,* 223 U. S. 519; *Meccano, Ltd.,* v. *Wanamaker,* 253 U. S. 136. It did not purport to deal with the appeal from the motion to dismiss, and there is no action with respect to that motion which is the subject of the present review.

The executor's argument at pages 27–28 to the effect that the California respondents are "claimants" within the meaning of the Act is fallacious for the reasons already stated (*supra,* pp. 14–18). The fact that in the *Young* case and in the *Schnader* case injunctions were maintained against state officials who were not claiming to be entitled to anything has no bearing in the matter. The officials in those cases were not alleged to be nor did they have to be "claimants", within the meaning of that word in interpleader. They were enjoined because they were threatening, through legal proceedings, to cause something to be done which would cause irreparable injury to plaintiff. A claimant in interpleader, however, must be the one who is *actually* claiming *to be entitled* to the property or obligation. *Klaber* v. *Mary-*

land Casualty Co., 69 F. (2) 934, 939. The 1936 amendment did not change the Act in this respect.

The executor's attempt at page 28 of its Brief to minimize the importance of the point that the respondent Sproul, the Inheritance Tax Appraiser, is a court officer signally fails. The entire inheritance tax proceeding in California is a proceeding in court which *began*, in the present case, with the court's appointment of Mr. Sproul as Appraiser. The Appraiser is but an officer of the court in that proceeding (*supra*, p. 12). It was for this very reason that in 1936 the District Court of the United States for the Southern District of California (Central Division), by a three judge court in the case of *Keller et al.* v. *Webb, Attorney General, et al.* (unreported) dismissed a bill brought under sec. 266 of the Judicial Code by executors of a will originally probated in Texas, who had also received an ancillary appointment in California, against the Attorney General, Controller, Inheritance Tax Appraiser and County Treasurer seeking to have them enjoined from attempting to assess or collect any inheritance tax based on a California domicile, the executors relying on *City Bank* v. *Schnader*, 291 U. S. 24.

The doctrine of *Ex parte Young* does not uphold an injunction against an officer of the court. At page 163 of the *Young* case this Court pointed out that the right to enjoin an individual, even though a state official, from commencing a suit, did not include the power to restrain a court from acting in any case brought before it, nor did it include power to prevent any investigation or action by a grand jury. "The difference between the power to enjoin an individual from doing certain things, and the power to enjoin the courts from proceed-

ing *in their own way* to exercise jurisdiction is plain, and no power to do the latter exists because of a power to do the former." The prohibition of sec. 265 of the Judicial Code is comprehensive and "includes all steps taken or which may be taken in the state court *or by its officers* from the institution to the close of the final process." *Hill* v. *Martin,* 296 U. S. 393, 403. A federal court may not enjoin an officer of a state court from acting in a proceeding which was properly pending in the state court when the suit was begun in the Federal court. *Lion Bonding Co.* v. *Karatz* (the *Hertz* case) 262 U. S. 77, 87–90. The injunction provision of the Interpleader Act (R. 8) effected no modification of sec. 265 in this respect. It purports only to authorize injunctions against "such claimants," *i. e.* those who were such claimants as could be impleaded under the Act, enjoining them from "instituting or prosecuting any suit or proceeding" in the state court. As we have already shown (*supra,* pp. 14–18), neither the Inheritance Tax Appraiser, nor the other California respondents can be "claimants" within the meaning of the Act.

The well-established principle that a construction of a statute which raises a grave and doubtful constitutional question "will not be adopted, where some other is open to the court". *Missouri Pacific R. R. Co.* v. *Boone,* 270 U. S. 466, 471–2; *Interstate Commerce Commission* v. *Oregon-Washington R. R. Co.,* 288 U. S. 14; *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, requires that the Interpleader Act be not construed to include such a suit as the present one. The executor appears to assume that the mere fact that the District Court reached the conclusion that that Act should be construed to include such a suit, coupled with the executor's con-

clusion and assertion to that effect, is sufficient evidence that such a construction would not "raise a grave and doubtful constitutional question" (P. Brief 29). The District Court opinion was that of a single judge. Is it unimportant that a majority of the Circuit Court of Appeals reached a contrary conclusion? Is it unimportant that the District Court of the United States for the Northern District of Iowa, Cedar Rapids Division (Judge Scott), on June 30, 1937, in the case of *Boyer Exec. et al.* v. *Wegman, Treasurer et al.* (unreported), a similar proceeding brought by executors and legatees under the 1936 amendment of the Interpleader Act against the State Treasurers of Iowa and Oregon, dismissed the proceeding as against the State Treasurer of Oregon on the ground that the suit was in substance an action against the State of Oregon?* Is it unimportant that the Double Domicile Committee of the National Tax Association, in its second Report at the 1936 Conference, expressly referred to the fact that in its first report (in 1935) it had suggested that grave doubt existed whether the Constitution conferred upon the Federal Government the power to pass legislation "under which two or more states (as the real parties in interest) may be joined in a proceeding in a Federal Court for the purpose of determining the domicile of a decedent", and then said "We refer to this doubt because we do not wish to minimize its gravity by anything said herein . . ."? In its first report, which was

* In that case the executrix and other beneficiaries of the will of an Oregon decedent brought a bill in equity, patterned after the bill in the case at bar, to interplead the State Treasurers of Oregon and Iowa to determine whether certain intangibles claimed by the Iowa Treasurer to have acquired a business situs in Iowa, could be subject to inheritance tax in Iowa rather than in Oregon.

accepted by the Convention, it said in part, in reference to the suggestion that the jurisdiction of the district court be enlarged to include such cases of disputed domicile in tax matters: "*Each State involved would say that when it subscribed to the Federal Constitution it did not surrender to the Federal Government its power to say whether a decedent was domiciled within its borders;* that this is purely a matter for state determination except that, if a state commits a wrong for which redress may be had under the Federal Constitution, the remedy is by action of the executor against the offending state by certiorari from the highest state court to the United States Supreme Court." Is not the action of that convention in accepting that report extremely persuasive to the effect that the construction contended for by the executor would raise a grave doubt as to the constitutionality of the Interpleader Act?

In most of the cases where such a principle was followed, the language of the Act was such as to lend considerable force to the construction contended for, and the court rejected such a construction because it would raise a constitutional doubt. In the present case there is nothing of the sort, either in the Act ~~of~~ its history, and it is only by the most tortuous kind of reasoning that the construction contended for is arrived at! If read according to its terms, the Act presents no difficulty. It does not purport to apply to obligations to States, but only to obligations to "residents" of States. An inheritance tax obligation is owed to the State, not to any "resident" of the State. The tax officials do not claim to be "entitled" to such obligation. It does not purport to authorize interpleader of representatives of an entity which would be entitled to the obligation if its claim were established. "A condition should not be

implied which, to say the least, would raise a grave question as to the constitutional validity of the act." *Russian Fleet* v. *United States,* 282 U. S. 481, 492. We cannot attribute to Congress an intent to defy the Eleventh Amendment or "even to come so near to doing so as to raise a serious doubt of constitutional law". *Anniston Mfg. Co.* v. *Davis,* 301 U. S. 337, 351–2.

In *Hans* v. *Louisiana,* 134 U. S. 1, this Court was dealing with just such an attempt to strain the construction of the Eleventh Amendment, and the language used by the Court in that opinion (which has since been quoted with approval in *Monaco* v. *Mississippi,* 292 U. S. 313, 326) needs but slight change in wording to be equally apropos in the case at bar. At page 15 the Court said:

> "It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of. Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a State to sue their own state in the federal courts, whilst the idea of suits by citizens of other states, or of foreign states, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended to it a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States: can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face."

The present case is an attempt to strain the Interpleader Act to a construction never imagined or

dreamed of. Suppose that Congress, when considering the bill, had let it be known that it contemplated that the Act included interpleader of inheritance tax claims: can we imagine that it would have been passed in the face of the probable opposition of most of the States? It is to be noted that the desires of several of the States were considered of great importance in the passage of the Act of August 21, 1937 (Senate Report No. 1035, 75th Congress, 1st Sess.).

In view of the Eleventh Amendment Congress could not authorize an executor to interplead the question of his estate's inheritance tax liability by interpleading the States themselves. It is the executor's premise that Congress could, however, escape that prohibition and authorize interpleader of such a tax liability through the device of interpleading the tax officials as individuals. The Interpleader Act provides only for interpleader of "claimants", and defines such claimants as those persons who, if their claims were established, would be entitled to the plaintiff's admitted obligation. In most, if not all cases, the State, and the State only, is entitled to the inheritance tax obligation. The legislative history of the Act shows clearly that Congress did not have in mind interpleader of inheritance tax or any other tax obligations, and that it had no intent to create a device for circumventing the Eleventh Amendment. How, then, can any court construe the Act as accomplishing such an unintended result? How can it be done consistently with the established rule that a statute will be construed so as not to raise a grave doubt as to its constitutionality? How can it be done, when to do so will require reading into the Act a definition of the word "claimant" for the purpose of interpleader of

conflicting claims as to inheritance tax liability which is different from and inconsistent with the express definition given that word in the Act? How can any court so construe the Act as to impute to Congress an intent to circumvent the Eleventh Amendment, especially when it did not in fact have any such intent?

AS TO DIVISION III OF THE EXECUTOR'S ARGUMENT.

In this part of its Brief the executor disregards the fact that suits in equity to enjoin a person from committing a threatened wrong, and suits in equity to interplead two adverse claimants, are based and proceed upon entirely different principles.

Starting with the premise that a district court may entertain a bill in equity to enjoin a state official from threatening to enforce an unconstitutional statute (or a constitutional statute in an unconstitutional manner), wihout violating the Eleventh Amendment, the executor jumps to the conclusion that *therefore* it may entertain a bill of interpleader against the officials of two states to determine which of the two states is entitled to an inheritance tax on the intangible property of a decedent, without violating that Amendment.

The pathway of sound reasoning does not lead from the premise to the conclusion. An examination of the cases which establish the premise, and a study of the principles and line of reasoning on which the premise is based make it clear that the conclusion cannot be reached.

The principle and line of reasoning upon which such cases rest is that a state official who threatens to collect an unconstitutional tax is acting without the authority of the State. The State has no power to impart to him

any immunity from responsibility to the supreme authority of the United States. The official in such a case is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct". (*Ex parte Young*, 209 U. S. 123, 159–160). He is threatening to commit an irreparable personal wrong or trespass against the plaintiff or his property. The plaintiff comes into equity for the sole purpose of obtaining an injunction to prevent him from committing the threatened act. The principle of equity invoked is that a suit in equity may be brought to prevent a threatened wrong.

The purpose of the equitable remedy of interpleader, however, is to enable a stakeholder to obtain *in one proceeding* a *discharge* from an admitted liability to which there are two or more claimants. The court is to weigh the right or title of each claimant and determine which according to equity is the better. *Sanders* v. *Fertilizer Works*, 292 U. S. 190, 199. The plaintiff comes into equity as a stakeholder for the purpose of requiring that all of those *claimants* press *their claims* in *one court* and in *one proceeding*, rather than in separate courts or separate proceedings. He is seeking a discharge from an obligation, not prevention of a threatened trespass or wrong.

In the *Young* case and like cases the sole purpose of the suit is to enjoin the defendant from committing a threatened trespass or wrong. He is to be stopped from doing something which he has no right to do. Although he may be a state official, about to do something which the State statute expressly authorizes or requires him to do, he still may be stopped from doing it if it would deprive the plaintiff of his constitutional rights, if it

would violate the Fourteenth Amendment. In interpleader, on the other hand, the purpose of the suit is to *require* the defendant to do his threatened act in one place rather than in another. The executor does not allege that the California respondents are commiting a wrong in attempting to prove that the decedent was domiciled in California. The only purpose of the interpleader is to require that claim to be prosecuted in the Massachusetts District Court rather than in the California state court.

In suits to enjoin threatened wrongs the plaintiff says: "I am under no obligation to the defendant, and it is equitable that the defendant should be prevented from pressing me further." In interpleader the plaintiff says: "I am indebted to one defendant or the other. It is inequitable that each should try to establish his claim to that obligation in the court of his own state. They should be required to press their claims at the same time and place in one proceeding, and I am entitled to be discharged in that proceeding from further obligation to either of them."

Not even the principle of the *Young* and similar cases can be invoked to permit a Federal court to entertain a suit against a State official "where the State, though not named as such, is, nevertheless, the only *real* party *against which alone* in fact the relief is asked, and against which the judgment or decree effectively operates." A suit against a state official in such a case comes within the prohibition of the Eleventh Amendment. *In re Ayers,* 123 U. S. 443, 505–6; *Missouri etc. Ry. Co.* v. *Missouri R. R. etc. Commissioners,* 183 U. S. 53, 58–9; *Missouri* v. *Fiske,* 290 U. S. 18, 27; *Monaco* v. *Mississippi,* 292 U. S. 313, 322; *Lynch* v. *U. S.,* 292 U. S.

571, 582; *Ex parte State of New York, No. 1,* 256 U. S. 490. "There is a wide difference between restraining officers of the State from interfering in such cases with the property of a citizen, and restraining them from prosecuting a suit in the name of the State in her courts to collect an alleged claim." (*Ayers* case, p. 509). In interpleader of inheritance tax obligations the States *must* be the *real* parties in interest. The relief asked is a discharge from further liability from such obligation, —*i. e.* from further liability to *both* States involved. Furthermore, the *real controversy* in such cases is the controversy as to the *jurisdictional fact* of domicile. Such a controversy of fact, for the purpose of settling the inheritance tax liability of the plaintiff, *must* be a controversy between the States, for such an obligation is an obligation to the State. The decree determining domicile and discharging the executor accordingly must of necessity effectively operate against the State whose claim is rejected.

At page 34 of its Brief the executor says that "The Court can neither assume nor determine that either set of officials is *acting legally,*" without a hearing on the facts as to the domicile. Such a statement leaves entirely out of consideration the situation in California as to the powers and functions of the California respondents. Wherein are any of them acting or threatening to act illegally? The Appraiser, as an officer—a referee—of the court, can only investigate and report to the California court, which report will amount only to prima facie evidence in the hearing before that court. There can be nothing illegal about his making an investigation or filing a report of his findings and conclusions, whether or not those findings or conclusions may

turn out to be wrong. Neither the Controller nor the Inheritance Tax Attorney has yet come into the picture in the pending tax proceeding in the California court, nor will they until after the Appraiser (now enjoined) files his report in court. They would not then be acting illegally in contending that the California court find the domicile to be in California. Even if such a finding should be wrong, they are not threatening to commit an irreparable injury. Nothing they can do would or could deprive the executor of any of its property without due process.

The situation is entirely unlike that in the case such as *Ex parte Young* and the other cases relied on by the executor. In those cases the officials were threatening by legal proceedings to do something which, if the plaintiff's contention were correct, would violate the defendants' constitutional rights. In the present case the executor makes no claim that the domicile was not in California, or that the California respondents are acting arbitrarily or wrongfully in so contending, or that a finding by the California court of a California domicile would be erroneous. In the absence of any such allegation or claim it must be assumed that they are acting legally, and it should also be assumed that there is or may be substantial evidence to support such a finding. There is no similarity in the situations.

The executor takes the position that if each State imposed its inheritance tax upon the basis of its being the domiciliary State, it would follow *ipso facto* that "one or the other of the States will be violating the Fourteenth Amendment." (P. Brief, 41). The executor has intentionally not alleged either that the California respondents or that Mr. Long for Massachusetts is acting

arbitrarily and without substantial evidence to support their respective conclusions as to the domicile. Its suit would not have been an interpleader suit if it had done so. Its whole case rests on its position that from the *mere fact* of such a determination by each side the resulting assessment by one or by the other would violate the due process clause.

The District Court took the same position, relying on *First National Bank* v. *Maine,* 284 U. S. 312. That case, however, neither so held or so implied, nor did the case of *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204. In each of those cases the *only question* was whether intangibles could be subjected to an inheritance tax by a state *other than* the domiciliary state. The state whose tax was involved was admittedly *not* the domiciliary State. The only point established was that no State may tax anything not within her jurisdiction without violating the Fourteenth Amendment, and that the only State which had such jurisdiction over the intangibles was the State of the decedent's domicile. This Court was there concerned with a question of multiple taxation "following misapplication of some legal fiction or conflicting theories concerning the *sovereign's right* to exact contributions." (*Minnesota* case, p. 212).

In the present case neither State or set of officials is threatening to misapply any legal fiction, such as claiming that credits have a taxable situs at the domicile of the debtor instead of, or as well as, at the domicile of the creditor. Each State is proceeding on the same theory, *i. e.* that intangibles are taxable at the domicile of the decedent. There are no conflicting theories concerning the sovereign's right to exact contributions. The only conflict alleged is a conflict as to a question of

fact—the jurisdictional fact—the place of the decedent's domicile.

There is nothing in those cases which indicates that conflicting decisions by the tribunals of the two States as to the jurisdictional fact of domicile and the imposition of the tax accordingly would necessarily involve a violation of the Fourteenth Amendment by one of them, nor does such a conclusion follow from them.

It is well established that the courts of one sovereignty are not bound by the determination of the fact of domicile by the courts of another sovereignty, where that fact is a jurisdictional fact. *Iowa* v. *Slimmer,* 248 U. S. 115; *Olmsted* v. *Olmsted,* 216 U. S. 386; *Chase National Bank* v. *Norwalk,* 291 U. S. 431, 440–1; *Thormann* v. *Frame,* 176 U. S. 350; *Overby* v. *Gordon,* 177 U. S. 214; *Burbank* v. *Ernst,* 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394. The full faith and credit clause of the Constitution has no application to prevent such determination. *Tilt* v. *Kelsey,* 207 U. S. 43.

It is equally well established that the Constitution does not guarantee uniformity of decision as to facts by the courts of two sovereign States. *Milwaukee Elec. Ry. & Lt. Co.* v. *Wisconsin,* 252 U. S. 100, 106; *Central Land Co.* v. *Laidley,* 159 U. S. 103; *Tracy* v. *Ginzberg,* 205 U. S. 170. The most that it does is to guarantee due process of law in arriving at such decision, and to that end this court may re-examine the factual situation to ascertain whether the conclusion of the state court had adequate evidence to support it. *Johnson Oil Co.* v. *Oklahoma,* 290 U. S. 158. Except for the original jurisdiction of this Court in controversies between States, the Constitution does not give the Federal Government

or courts power to oust the state court's right to determine that jurisdictional fact for itself just because of the possibility that some other state court's decision may be to the contrary.

A decision upholding the Interpleader Act, construed as authorizing interpleader by an executor of his inheritance tax liability as between two States by interpleading their tax officials as individuals, would extend the scope of the Fourteenth Amendment much nearer the "sky limit" than did the decisions of this Court in *Baldwin* v. *Missouri,* 281 U. S. 586; *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204; *First National Bank* v. *Maine,* 284 U. S. 312, and such cases. It would be construing the Fourteenth Amendment as committing to Congress the power to endow the Federal courts with jurisdiction to oust the States from their sovereign right to determine for inheritance tax purposes the jurisdictional fact of domicile of a decedent, and also the power to circumvent the Eleventh Amendment through the device of authorizing interpleader of tax officials as individuals in such cases, instead of interpleading the States which are the only *real* parties in interest.

If it were an established principle that the collection by two States of inheritance taxes, each on the basis of a determination that it was the domiciliary state would, *of itself,* constitute a violation of the Fourteenth Amendment, it is hardly conceivable that this Court would have denied certiorari in *Dorrance* v. *Martin,* 298 U. S. 678, for in that case that *very question* was *squarely raised.* It was raised in the Petition and argued in both briefs, and it also had been properly raised in the courts below. The Petition pointed out

that the Pennsylvania tax had been collected and that if New Jersey were to collect a tax on the same property "necessarily the estate would have been subjected to an unconstitutional tax by one State or the other."

The only way in which it is claimed that there might be a violation of the Fourteenth Amendment in the case at bar is that a determination by the California *court* that the decedent was domiciled in California might turn out to be wrong. It is settled that where collection of a tax cannot be enforced except by suit in court, of which the taxpayer has notice and in which all rights to contest the legality of the tax assessed are open to him as a defense the taxpayer is not deprived of his property without due process of law, for the opportunity to contest the tax, and defend against its legality in the suit brought to enforce the payment, would give him his day in court. Opportunity to be heard in judicial proceedings to enforce the tax constitutes due process of law. *Nickey* v. *Mississippi,* 292 U. S., 393, 396; *Mt. St. Mary's Cemetery Ass'n* v. *Mullins,* 248 U. S. 501; see *DePauw University* v. *Brunk,* 53 F. (2) 647, Aff'd 285 U. S. 527; *Palmer* v. *McMahon,* 133 U. S. 660. In the case at bar the California tax is determined and enforced by a proceeding in court and of such suit the taxpayer has notice and all rights to contest the legality of the tax are open to the taxpayer in that court (see pp. 10-13 *supra*).

If, then, the mere fact that conflicting decisions had been arrived at by the tribunals of the States would not, of itself, involve a violation of the Fourteenth Amendment, *a fortiori,* the mere existence of the possibility of such conflicting decisions cannot support an allegation that such a violation is threatened.

In *City Bank* v. *Schnader*, 291 U. S. 24, the paintings of a New York decedent, which were in Pennsylvania on loan for exhibition purposes at the time of the death, were about to be subjected to the Pennsylvania inheritance tax. The bill alleged that, as the property was only temporarily within the State, it had no tax situs in Pennsylvania and that therefore the threatened tax would violate the Fourteenth Amendment. The defendants, the Attorney General and the Secretary of Revenue, had appeared *generally*, and objected to the jurisdiction of the court solely on the ground of adequacy of remedy in the state courts. No question was raised or considered as to the effect of the Eleventh Amendment. The only question considered on the appeal was whether the district court was right in dismissing the bill on the ground that the plaintiff had an adequate remedy at law because it could appeal from the appraisement to the county court, and the point decided was that, as the statutory remedy would lie only in the state court and was not cognizable by the Federal courts, its existence could not oust Federal equity jurisdiction.

The situation and questions involved in that case were entirely unlike those in the present case. The plaintiff was seeking only injunctive relief against the defendants. The district court's jurisdiction over the defendants did not hinge upon whether or not the bill was a bill of interpleader, for the defendants resided within the judicial district of the court. The bill asked for no relief as to New York or the New York tax. Neither New York nor the New York tax officials were parties, nor could they be bound by any of the findings or conclusions of the district court. They were not bound by any admission or stipulations as to the facts. The

plaintiff was not, and did not have to be to come within the enabling statute, seeking a discharge by the court in one suit from further liability for an obligation as to which two claimants were adversely claiming ownership.

The gravamen of the complaint was that, if the facts were as alleged, the tax claimed would be unconstitutional and that therefore the defendant tax officials should be enjoined from assessing or attempting to collect the tax. It was not, as in the present case, that if the facts were as claimed by A, the tax asserted by B to be due B's State would be unconstitutional, and that if the facts were as claimed by B, the tax asserted by A to be due A's State would be unconstitutional, and that therefore the court should settle the question in one suit as to whether the tax is due to A's state or to B's state and discharge the plaintiff from further liability therefor to both of them.

Furthermore, there appears to have been no controversy as to the facts (same case, 293 U. S. 112, 117). The only issue on the merits of the case was whether on those facts the paintings as a matter of law had a tax situs in Pennsylvania.* Also, no question was involved

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* In this connection we wish also to point out that, as such injunction suit can be maintained only on the theory that for the purposes of such suit the defendant officials are to be considered as "stripped of their official or representative character" (*Young* case, p. 160) it must follow that neither the State nor any successor Attorney General or Secretary of Revenue would be bound by the admission or stipulations. Suppose a successor had felt that the evidence available would have warranted a different conclusion as to some vital fact on which the question of law hinged? Such successor or the State would not be subject to the injunction and could not be met with a plea of *res judicata*, and such a result would not be inconsistent with the principle on which the original injunction suit was maintained. In the present case, however, while the executor is claiming in one breath that the suit is against the tax officials as individuals, in the next breath it is claim-

as to whether an executor could select the forum in which the vital issue of fact of domicile, on which the jurisdiction of the State would hinge, and require that vital issue to be tried before the Federal court in the adverse claimant State.

It is therefore clear that the decision in the *Schnader* case in no way supports the executor's contention that the present interpleader suit can be maintained and that the basis for the jurisdiction taken in the *Schnader* case is in no way affected by the decision of the Circuit Court of Appeals in the present case.

In referring to the *Dorrance Estate* litigation at page 42 of its Brief the executor is in error in stating that the failure to prevent the violation of constitutional rights was due to unfortunate pleadings and procedure by the estate in the state courts. If that estate made any such failure, it was only in the Pennsylvania court. The first final determination was made there. *Estate of Dorrance,* 309 Pa. 151. There was no such failure by the estate in the New Jersey courts. Perhaps it was too late then to be effectual. The New Jersey State Court proceedings were not completed until *after* the 1936 Amendment of the Interpleader Act.

Neither California nor Massachusetts are seeking any way to circumvent the Fourteenth Amendment.

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ing that the district court should have jurisdiction so that the question as to the executor's inheritance tax liability to both States can be settled in that one suit and that the executor be discharged by the court from further liability therefor. It would be inconsistent, however, with the principle on which interpleader lies for the judgment not to be *res judicata* as to the States and any successor tax officials. But how could it be *res judicata* as to them if the defendant officials had not been, for the purposes of the interpleader suit, interpleaded in their official and representative character rather than in their individual capacity, in which case the suit would be within the prohibition of the Eleventh Amendment.

California has no such purpose, nor may such a purpose be implied, and we assume the same to be true as to Massachusetts. In raising the question of jurisdiction, the California respondents are merely seeking to prevent a violation of California's constitutional right not to be subjected directly or indirectly to a suit in a Federal Court by a citizen of another State. They are insisting on the right of the California court to determine for itself, without interference by a Federal Court, the jurisdictional fact of domicile subject of course to an ultimate right of review by this Court if it commit error or deny due process. They are insisting that the entire judicial power granted by the Constitution did not embrace the power to entertain interpleader suits by a taxpayer to determine, as between two States, a controversy as to the jurisdictional fact of domicile.

The Constitution gives to this Court original jurisdiction of controversies between States (Art. III sec. 2) and sec. 233 of the Judicial Code makes such jurisdiction exclusive. There is nothing in the Interpleader Act or in its legislative history evidencing any intent to modify that situation. If the Interpleader Act be construed to authorize a District Court to entertain a suit to interplead such a controversy as to domicile, it would follow, by the same line of reasoning, that a District Court would determine a controversy between two States as to the location of the boundary line between them, a controversy such as heretofore always has been recognized as one within the exclusive jurisdiction of this Court. Suppose a person owned a parcel of land located at such boundary line between State A and State B, and that each State claimed that the location of the line was such as to include that person's property and

threatened to tax him or his estate accordingly. If interpleader lies in the present case, it would equally lie in the supposed case. If, as we submit, it is unthinkable that the Interpleader Act could be construed to give to a *District Court* jurisdiction to settle, as between two sovereign States, such a boundary dispute, it is equally unthinkable that it could settle, as between two States, such a domicile controversy.

Respectfully submitted,

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APPENDIX.

CALIFORNIA POLITICAL CODE.

"*Section 445. Inheritance tax department.* The controller shall maintain under his authority and direction a department, to be known as the inheritance tax department, which is hereby established, for the purpose of supervising and assisting in the administration of the inheritance or transfer tax laws of this state.

"*Duties.* Said department shall gather, record, compile, publish and distribute such information and data as the controller may direct relative to the inheritance or transfer tax laws of this or other states or relative to the administration, enforcement or evasion of such laws. Said department shall cooperate with, advise and assist inheritance tax appraisers, county treasurers, district attorneys, and other officers and persons in the administration and enforcement of the inheritance or transfer tax laws of this state, and shall prepare, publish and distribute such blank forms for the use of inheritance tax appraisers or other use as the controller may direct.

"*Attorneys.* In connection with said inheritance tax department, the controller may appoint, in addition to other employees provided for by statute, an inheritance tax attorney whose office shall be in the City of Sacramento, five assistant tax attorneys, two of whom shall have their offices in the City of Los Angeles, two of whom shall have their offices in the City and County of San Francisco, and one of whom shall have his office in the City of Sacramento. Said attorneys shall be civil executive officers and shall be admitited and licensed to

practice before the supreme court of this state. The inheritance tax attorney shall, under the authority and direction of the controller, have general supervision of said department. He shall have particular charge of the legal work connected with said department and shall perform such other duties as the controller may direct.

"*Services.* Said assistant inheritance tax attorneys shall perform such legal and other services relative to the administration and enforcement of said inheritance or transfer tax laws in the respective counties in which their offices may be situated or in any neighboring county, as the controller may direct."

"*Salaries.* . . ." (Omitted because not material.)

"*Expenses.* . . ." (Omitted because not material.)

PERTINENT PARTS OF THE INHERITANCE TAX ACT OF CALIFORNIA.

ACT OF 1921 AS AMENDED 1923, 1925, 1927 AND 1929.

"SEC. 14. The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. . . .

"SEC. 15. The superior court in the county in which is situate the real property of a decedent, who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such nonresident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act; the court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other; *provided,* that the superior court having

acquired jurisdiction in probate of the estate of a decedent shall hear and determine in said probate proceedings all questions in relation to any tax arising under the provisions of this act: (*a*) Upon property passing in said probate proceedings. (*b*) Upon any other property transferred, within the meaning of subdivision three of section two or any other provisions of this act, to any person, institution or corporation taking any property under and by virtue of said probate proceedings.

"SEC. 16. (1) When any superior court, having jurisdiction in probate of the estate of any decedent, or a judge of such court, shall, in accordance with section 1444 of the Code of Civil Procedure, appoint the appraiser or appraisers in said section provided for, said superior court or judge thereof shall also at the same time designate and appoint an inheritance tax appraiser (unless such designation and appointment be previously made) to ascertain and report to said superior court the amount of inheritance tax due upon any property passing in said probate proceeding, or a lien thereon, or upon any other property transferred within the meaning of subdivision (3) of section 2 of this act, or under any other provision of this act, to any person, institution or corporation taking property under and by virtue of said probate proceedings, together with such other or additional information as shall assist said court in the determination of said tax. Thereupon said inheritance tax appraiser shall have all the powers of a referee of said superior court, and shall have jurisdiction to require the attendance before him of the executor or administrator of said estate or any person interested therein, or any other person whom he may have

reason to believe possesses knowledge of the estate of said decedent, or knowledge of any property, transferred by said decedent within the meaning of this act, or knowledge of any facts that will aid said appraiser or the court in the determination of said tax. For the purpose of compelling the attendance of such person or persons before him, and for the purpose of appraising any property or interest subject to, or liable for any inheritance tax hereunder, and for the purpose of determining the amount of tax due thereon, the said inheritance tax appraiser is hereby authorized to issue subpoenas compelling the attendance of witnesses before him. Any person or persons who shall be served with a subpoena, issued by said inheritance tax appraiser, to appear and testify or to produce books and papers, and who shall refuse and neglect to appear and testify or to produce books and papers relevant to such appraisement, as commanded in such subpoena, shall be guilty of a contempt of court. And he may examine and take the evidence of such witnesses or if such executor or administrator, or other person under oath concerning such property and the value thereof and concerning the property or the estate of such decedent subject to probate, and concerning any transfer made by such decedent within the meaning of this act. Upon the completion of his inheritance tax appraisement in any probate proceeding, the inheritance tax appraiser shall make a report in writing to the superior court of the clear market value of the several interests in the estate of the decedent, and shall report the amount of inheritance, or transfer tax chargeable against, or a lien upon such interests, acquired by virtue of said probate proceedings or by any transfer within the meaning

of this act, to any person, institution or corporation acquiring any property by virtue of said probate proceedings together with such other facts as may advise the court in regard thereto, or which the court may require, and may return to said superior court such depositions as he may have had reduced to writing, exhibits, or other testimony or information taken before him, or submitted to him.

"(2) Upon the filing of said report said appraiser shall mail a copy thereof to the state controller and the clerk of said superior court shall on said day or the next succeeding judicial day give notice of such filing to all persons interested in such proceedings by causing notice to be posted at the court house in the county where the court is held, and in addition thereto shall mail to the state controller and to all persons chargeable with any tax in said report who have appeared in such proceeding, a copy of said notice. At any time after the expiration of ten days thereafter, if no objection to said report be filed, the said superior court or a judge thereof, may, without further notice, give and make its order confirming said report and fixing the tax in accordance therewith. At any time prior to the making of said order, any person interested in said proceeding (including the state controller) may file objections in writing to said report. Thereupon the clerk of the said superior court shall fix a time, not less than ten days thereafter, for the hearing thereof, and shall give notice of said hearing by posting a notice thereof at the court house in the county where the court is held and by forthwith mailing a copy of such objection and of such notice to the state controller, county treasurer and inheritance tax appraiser. Upon the hearing of said objections,

said court, may make such order as to it may seem meet and proper in the premises; provided, that for the purpose of said hearing the report of the inheritance tax appraiser shall be presumed to be correct and it shall be the duty of objector or objectors to proceed in support of said objection or objections.

"(3) If, upon examination of the executor or administrator of said estate or other persons familiar with the affairs of such decedent, or from other information before him, it shall appear to the inheritance tax appraiser that there is no inheritance tax due out of said estate or a lien upon any property or interest therein, said appraiser may so certify to the superior court, and at any time thereafter, if no objection to said certificate shall have been filed, said superior court or a judge thereof may, without further notice, make an order or decree that there are no inheritance taxes due out of said estate or upon any interest therein or may make such different order as may to it seem meet in the premises. Such order shall be conclusive only as to such property as may have been returned in the inventory or inventory and appraisement in said probate proceedings.

"SEC. 17. (1) If it shall appear to the superior court upon petition of the state controller that any transfer has been made within the meaning of this act and the taxability thereof, and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer and the liability therefor, and the amount thereof may be determined, said court shall issue a citation ordering and directing the persons who may appear liable therefor or known to own any interest in or part of the property transferred,

to appear before said court or before an inheritance tax appraiser to be designated by said order at a time and place in said order named, not less than ten days nor more than one year from the date of such order, to be examined, under oath by said court or by said appraiser as the case may be concerning said transfer and all facts connected therewith, and concerning the property transferred and the character and value thereof."

"SEC. 18. The orders, decrees and judgments fixing tax or determining that no tax is due, mentioned in this act, shall have the force and effect of judgments in civil actions. Except as otherwise herein provided, the provisions of the Code of Civil Procedure relative to judgments, new trials, appeals, attachments and execution of judgments, so far as applicable, shall govern all proceedings taken under this act. Nothing in this section shall preclude the state from relief herein provided for, which may be inconsistent with the provisions of the Code of Civil Procedure.

"SEC. 19. The treasurer of each county shall collect all taxes and moneys that may be due and payable under this act and pay the same to the state treasurer (excepting such moneys as he may pay out from time to time pursuant to the provisions of this act) and the state treasurer shall give him a receipt therefor;"

"SEC. 22. All taxes levied and collected under this act shall be paid into the state treasury to the credit of the general fund."

Calendar No. 583.

74TH CONGRESS *1st Session* SENATE REPORT No. 558

THE FEDERAL INTERPLEADER BILL

April 15 (calendar day, April 29), 1935.—Ordered to be printed

Mr. AUSTIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1277]

The Committee on the Judiciary, to whom was referred the bill S. 1277 authorizing persons, firms, corporations, associations, or societies to file bills of interpleader, having had the same under consideration, report favorably thereon with an amendment in the nature of a substitute and recommend that as amended the bill do pass.

The amendment strikes out all after the enacting clause and inserts provisions which are a development of the original bill in part effecting the following changes in the present law:

Bills in the nature of interpleader are included;

The class of parties entitled to use of the remedy is broadened;

The scope of interpleader is extended over other subjects than insurance;

The titles or claims supporting the action are extended;

The venue is made more convenient for claimants;

A bond is permitted as an alternative deposit;
Privity among claimants is abolished;
Interpleader is allowed defensively in actions at law.

At the second session of the Seventy-third Congress the same bill, bearing calendar no. 1517 and S. no. 1538, was comprehensively reported from the Senate Committee on the Judiciary by the Senator from Rhode Island, Mr. Hebert, report no. 1417, which is made a part hereof, as follows:

Senate Report No. 1417, Seventy-third Congress, second session

The Committee on the Judiciary, to whom was referred the bill (S. 1538) authorizing persons, firms, corporations, associations, or societies to file bills of interpleader, or bills in the nature of interpleader, having had the same under consideration, report favorably thereon with an amendment in the nature of a substitute and recommended that as amended the bill do pass.

The Committee have been aided materially in the consideration of this bill by a number of eminent members of the bar, among whom is Zechariah Chafee, Jr., member of the Rhode Island bar and professor of law in Harvard University, who prepared a monograph on the bill for the section of insurance law of the American Bar Association. The committee in this report are availing themselves of Professor Chafee's research on this subject

THE NEED OF CHANGES IN FEDERAL INTERPLEADER LAW

Life-insurance companies, surety companies, banks, railroads, warehouses, and other kinds of corporations doing business in several States, are frequently subjected to conflicting claims by two or more persons

growing out of a single obligation previously incurred by the corporation. The equitable remedy of interpleader has long been useful for dealing just with such conflicting claims in situations where the claimants all live in the same State. The stakeholder admits liability and is anxious to pay the person rightfully entitled to payment if it can be ascertained which of the claimants is that person. Interpleader enables the stakeholder to put the money or other property in dispute into court, withdraw from the proceeding, and leave the claimants to litigate between themselves the ownership of the fund in court.

Since the claimants are now enabled to assert their rights in the interpleader proceeding, an injunction is issued for bidding (*sic*) the claimants to bring any further proceedings directly against the stakeholder. The claimants are greatly benefitted by the opportunity to settle their controversy in the interpleader, because the winning claimant can at once obtain the property in dispute from the court, which has such property in its possession or control. He is thus much better off than if he had merely obtained a judgment at law against the stakeholder, for then he would have been faced with the difficulties of finding assets and levying execution. Thus interpleader is a remedy which benefits all parties concerned.

In many controversies where interpleader would be desirable, difficulties arise because the claimants reside in different States. This may prevent the life-insurance company or other stakeholder from obtaining interpleader in a State court. For example, if a Pennsylvanian and a Californian each claimed to be the proper beneficiary of a life-insurance policy, the company could

not force the Californian into the Pennsylvanian court in order to interplead there with the Pennsylvanian, because the process of the Pennsylvania courts does not run beyond the limits of the State. This was definitely established by the Supreme Court decision of *New York Life Insurance Co.* v. *Dunlevy* (241 U. S. 519), decided in 1916.

In the absence of special Federal legislation, interpleader in a United States court would also be difficult to obtain when the claimants reside in different States, because the process of a United States court does not normally run outside the Federal district in which suit is brought. Thus, in the case described above, a United States district court in Pennsylvania could not acquire personal jurisdiction over the Californian, and conversely such a court in California could not acquire personal jurisdiction over the Pennsylvanian. Consequently the Dunlevy case left insurance companies without an adequate remedy in either State or Federal courts.

A partial remedy for this injustice was obtained in 1917, soon after the *Dunlevy* case, by the insurance companies. Congress then enacted the first Federal interpleader act (39 Stat. 929) enabling these companies to interplead in the United States court when the claimants lived in different States, and providing that the process of the court could run into all parts of the United States, wherever the various claimants lived. A second statute in 1925 (43 Stat. 976) made some improvements, and the existing third statute, enacted in 1926 (44 Stat. 416, 28 U. S. C. Supp., sec. 41 (26)) made further improvements and extended the benefits of the act to certain other types of stakeholders who badly

needed relief, namely, casualty companies and surety companies. This legislation has worked admirably. Many suits have been brought under it[1] and the disputes between the claimants have been settled quickly with apparent satisfaction to themselves as well as to the insurance companies and other organizations benefitted by the statutes.

Many important businesses which are vexed by similar claims from residents of different States still remain outside the scope of this legislation, for instance, railroads, warehouses, banks (especially savings banks), and oil companies operating under licenses when ownership of the royalties is disputed or uncertain. The successful operation of the Federal interpleader legislation in its present limited form indicates that the benefits of this remedy could be justly extended to such other kinds of businesses. The main purpose of the proposed bill is to do this.

The existing limits on the kinds of companies which are permitted to file bills of interpleader are removed, so that this remedy will become available to individuals and corporations generally if they are subjected to claims by residents of two or more States. In addition, it seems desirable to ask Congress to remove definitely a few other obstacles which limit the power of the United States courts to handle these conflicting claims satisfactorily, and the proposed bill contains several provisions aimed at such obstacles.

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[1] A list of reported cases under the various Federal statutes until June 1932 will be found in 41 Yale Law Journal, 1164, n. 103, and 1165, nn. 104–106. Out of 25 reported cases there listed, interpleader was granted in 20 cases and denied in 4 cases; in one case the final outcome remained doubtful. At least 8 more cases granting interpleader have been subsequently reported. It is probable that numerous other cases have granted interpleader without getting reported.

The Committee have had constantly in mind the rights of the private citizens who are asserting claims against the various kinds of corporations that might file bills of interpleader, and has so drawn the bill as to protect and further the interests of these claimants.

The need for such legislation has already received the attention of members of the Senate and the House of Representatives. H. R. 16335 introduced January 19, 1931, by Representative Thatcher (74 Congressional Record 2628, 1931), and S. 2216, introduced December 17, 1931, by Senator Barkley (75 Congressional Record 670, 1931), allow "any person, firm, corporation, association, or society" to have interpleader under specified conditions and provide that the action may be instituted "in a district in which one or more of such claimants resides." Bills to the same effect are pending in the present Congress.

S. 1538 was introduced by Senator Hebert on April 17 (calendar day, Apr. 26), 1933. Favorable action thereon was recommended in 1933 by the standing committee on insurance law of the American Bar Association and by the association. An identical bill was introduced by Representative Knutson of Minnesota on March 10, 1933. It is hoped that if the bill is enacted into law no further changes in the Federal Interpleader Act will be found necessary for a long time to come.

Changes from Present Law

The bill as originally introduced provides for a number of changes in the present interpleader law. Most of these changes are included in the amendment recommended by the committee. The amendment, however, contains additional provisions not found in the original

bill. Reasons why the committee believes the amendment in the nature of a substitute preferable to the original bill will be hereinafter set forth.

The changes in the present law as embodied in the amendment recommended by the committee, together with the reasons therefor, are as follows:

1. Bills in the nature of interpleader are included. A bill in the nature of a bill of interpleader describes a suit filed by a stakeholder who has some special ground for equitable relief besides the double vexation. For instance, he is a trustee or wants cancelation of an instrument for fraud. On the other hand, double vexation is the only reason for equitable jurisdiction over a bill of interpleader (often called a strict bill) and the substantive questions at issue are nearly always legal. The practical difference between the two types of bills is that the long-established equitable principles limiting strict bills are considerably relaxed in cases of bills in the nature of bills of interpleader.

Federal jurisdiction over such proceedings would be very valuable for the just settlement of many controversies, especially where surety companies are involved. For example, a surety company writes a nonstatutory bond covering a building contractor, and it is doubtful whether it runs to the benefit of materialmen as well as of the landowner, who is a citizen of a different State from the materialmen. The company may have certain defenses if the bond be construed one way and not if it be construed the other. The amount of the bond is insufficient to cover both the materialmen and the landowner in full, so that the surety company wishes to pay the total amount of the bond into court and interplead

these various claimants. A strict bill of interpleader might be denied in many courts in this case, because the above-mentioned situation as to defenses gives the surety company some interest in the outcome of the dispute. Such interest would not bar a bill in the nature of a bill of interpleader, and the great multiplicity of parties would furnish the needed special equitable ground for such a bill. In such a case Federal jurisdiction and the unlimited area for service of process would be very valuable to enable the surety company to interplead and determine its just liabilities.

It is easy to imagine other cases where Federal jurisdiction over bills in the nature of bills of interpleader is desirable. Another reason for such jurisdiction is that the distinction between these bills and strict bills of interpleader is not always clear, so that the simplest plan is to allow the United States district courts to handle both types without being obliged to draw fine distinctions between them for jurisdictional purposes.

The 1917, 1925, and 1926 acts mention only bills of interpleader, and all the reported cases where relief was given under those acts involve strict bills. The existing statutory language may be sufficiently broad to include bills in the nature of bills of interpleader, but one district judge has held to the contrary.[2] Therefore, they have been expressly included in the proposed statute.

2. The right of interpleader is extended to persons, firms, corporations, and associations for the reasons mentioned in the foregoing section of this report wherein is set forth the general need of changes.

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[2] Dawkins, J., in *Pacific Mut. Life Ins. Co.* v. *Lusk* (46 F. (2d) 505) (W.D. La. 1930)

3. The subject matter in controversy is broadly defined to correspond with the extension of the parties who can interplead. Under existing interpleader law, which is limited to certain kinds of insurance organizations, the subject matter is limited to money or property or bonds or policies of insurance or certificates of membership. Under the amended bill the subject matter is extended by the addition of notes, certificates, or other instruments. Loans are also included because insurance companies are frequently confronted by two adverse claimants of the right to borrow under policies. There are also embodied "obligations", which would include informal contracts and probably tort obligations where the stakeholder is only a technical tort-feasor. Provision is also made for a claimant of a benefit of any of the above, which would include disputes over the right to the cash surrender value of an insurance policy.

4. The prerequisites of interpleader are stated as facts to be proved and not as averments in the bill. This change is formal only, and resolves a doubt as to the interpretation of existing interpleader law.

5. The stakeholder may either deposit the fund in court or file a bond. In the original bill, the deposit clause precedes the jurisdiction clause, but the amendment places it after that clause. Thus paragraph (a) of the amendment describes successively the persons who can file bills of interpleader, the subject matter in dispute, and the claimants; and then proceeds to state the requirement of deposit of the "res" in court. The deposit clause departs from the existing statute in some respects.

The amended bill allows the stakeholder, as an alternative to a deposit, to file a surety bond approved by the

court. Although the disputed subject matter will ordinarily be deposited in court, situations sometimes arise where the rigid requirement of a deposit would prevent just relief. For example, it is obvious that a deposit is impracticable when one claimant to the benefits of life insurance demands one disposition (or option) under the policy and the other claimant demands a very different disposition (or option). To illustrate, if claimant A demands the cash surrender value of the policy and claimant B demands the continuance of the insurance with the cash surrender value left intact, the requirement to deposit the thing in dispute cannot readily be complied with. Yet it would be harsh to deny interpleader under such circumstances. A bond in such a case will protect the claimants. Also the deposit of the fund in court involves a deduction for the clerk's commission (sometimes called poundage) and there will be no such deduction in the case of a bond. Moreover, the bond will entitle the winning claimant to interest.

6. Privity among claimants is expressly abolished. State courts have frequently denied interpleader in situations where it ought justly to be granted, because of an artificial requirement of privity among the claimants. For example, a warehouseman has been denied interpleader against the bailor and a claimant under a paramount title. It seems desirable to take advantage of the opportunity offered by the proposed bill to insert an explicit provision negativing the application of this doctrine. The extension of interpleader to new classes of stakeholders should not be hampered by narrow limitations on the remedy which may prevent justice from being accomplished in many situations where the interpleader is badly needed.

7. The venue provision is simplified. The amendment liberalizes the venue provisions of the 1926 act, which appear at two points in that statute. In section 1, where the essential requirements of interpleader are phrased as necessary averments in the stakeholder's bill, the first averment specified is "that one or more persons who are bona fide claimants * * * resides or reside within the territorial jurisdiction of said court." This clause also appeared in the acts of 1917 and 1925. The words "bona fide" were inserted presumably to prevent an insurance company from obtaining interpleader through a pretended claim. Inasmuch as such a claim, if proved, would lead to the dismissal of the bill under well-settled equitable principles, these words seem unnecessary. Their meaning is obscure, and they have been omitted.[3] The rest of the clause just quoted is substantially embodied in paragraph b of the amendment. The second passage of the 1926 act relating to venue appears in four long sentences at the beginning of section 2 of that act. Inasmuch as the 1926 act and its predecessors related chiefly to interpleader by life-insurance companies, Congress was much concerned with the problem whether suit ought to be brought at the residence of a beneficiary or an assignee, and the 1917, 1925, and 1926 statutes all go into this question in great detail. The courts have had considerable difficulty in understanding these provisions and have been inclined to disregard their detailed requirements and allow interpleader to be brought in any district where

[3] The only reported case discussing "bona fide" is *Ætna Life Ins. Co.* v. *Mason*, 30 F. (2d) 715 (D. N. J. 1929), in which the court treated these words as superfluous.

a claimant resides.[4] Because the proposed bill permits interpleader for all sorts of stakeholders, all these limitations upon venue seem unnecessary. Consequently, they have been discarded in the amendment. The only requirement now made is that one of more claimants must live in the district in which suit is brought.

8. Interpleader is allowed defensively in action at law. Although this procedure does not correspond to anything in the interpleader acts of 1917, 1925, and 1926, the convenient procedure which is described has already been used by many Federal courts under section 274b of the Judicial Code (U. S. C., title 28, sec. 398), and this section seems to have been construed to the same effect by the Supreme Court. However, there is some important judicial authority against this interpretation of section 274b. The proposed bill offers an opportunity to make it absolutely certain that a defendant can interplead in an action of law whenever he would also be entitled to interplead by a bill in equity.

The following example will illustrate the desirability of the provision in paragraph e. A Connecticut life-insurance company is sued at law in the United States district court in Connecticut by a New York woman who claims to be the sole beneficiary under a matured policy. A Massachusetts woman also claims to be the sole beneficiary and threatens to sue the company in a Massachusetts State court. The company could file an original bill of interpleader in equity in a United States

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[4] *Kansas City Life Insurance Co.* v. *Adamson*, 24 F. (2d) 107 (N. D. Tex. 1928); *Bankers' Life Co.* v. *Ebbert*, 48 F. (2d) 907 (W. D. Pa. 1928). Stricter cases dealing with the narrower venue provisions of the 1917 act were *Penn Mutual Life Insurance Co.* v. *Henderson*, 244 Fed. 877 (N. D. Fla. 1917); *New York Life Ins. Co.* v. *Kennedy*, 253 Fed. 287 (S. D. Fla. 1918).

district court in New York or Massachusetts (at the residence of either claimant) and have the Connecticut action at law enjoined. But under paragraph e the company can take the simpler course of filing an equitable defense in the Connecticut Federal action at law, asking that the plaintiff therein (the New York claimant) shall interplead with the Massachusetts claimant as to the amount of the policy, which the company therewith pays into the Connecticut Federal court. This court will thereupon issue process against the Massachusetts claimant ordering her to appear in the same action, and the writ can be served upon her in Massachusetts under paragaph c, which also allows her to be enjoined from prosecuting her claim elsewhere. Thus, instead of having to go to New York or Massachusetts and start a new Federal suit there, the company can have everything settled in the existing Connecticut suit.

In addition, if a stakeholder who is a defendant in an action at law in a United States District Court would be allowed to file an ancillary bill of interpleader (or in the nature of a bill of interpleader) in that court against the law plaintiff and against other claimants who were not originally joined in the action at law, then paragraph e would allow the defendant stakeholder to obtain the same relief by the simpler method of an equitable defense. This would be possible even if he could not have filed on original bill in equity against these claimants under the provisions of paragraph a of the draft. For example, a New York life insurance company is sued in a New York district court by P, a citizen of Virginia who professes to be a beneficiary under the policy. X, another Virginian, is an adverse beneficiary claimant and threatens suit. The insurance company cannot file

a bill of interpleader against the two claimants under the 1926 act or under paragraph a of the proposed bill, because the two claimants are both Virginians and not citizens of different States. However, the insurance company would, independently of Federal interpleader legislation be allowed by decisions in the second circuit (and perhaps elsewhere) to file an ancillary bill of interpleader in connection with the pending Federal lawsuit if the company could overcome the difficulty of getting service in the New York district upon X, a Virginian. In circuits which entertain such ancillary bills, paragraph e will allow the insurance company to interplead P and X by its answer in the lawsuit in the New York district, and under paragraph c the process of that district can be served on the Virginian claimant X at his Virginia residence so as to give the New York district court jurisdiction over claimant X as well as over P.

SUMMARY OF PRINCIPAL POINTS IN WHICH COMMITTEE AMENDMENT DIFFERS FROM ORIGINAL BILL

1. The amendment is so phrased as to permit the bill, if enacted into law, to be placed directly in the United States Code, title 28, section 41, which contains section 24 (26) of the Judicial Code. The amendment follows more closely the language of the statute now in force than does the bill as originally introduced.

2. The subject matter in controversy is defined to include unwritten obligations. (Hereinbefore discussed.)

3. Provisions are made for controversies over various benefits of life-insurance policies, such as loans, surrender value, etc. (Hereinbefore discussed.)

4. The amendment reads, "two or more adverse claimants, citizens of different States." This clause is

very important because it describes the necessary diversity of citizenship which gives Federal jurisdiction. The text of the 1926 act is closely followed. The original bill is phrased: "Two or more citizens of different States, and of one or more States who are adverse claimants," etc. The existing statutory language appears preferable.

5. Privity is expressly abolished. (Hereinbefore discussed.)

6. Venue is limited to the residence of a claimant in the amendment, whereas in the original bill it also includes the residence of the stakeholder. It appears that the subject of venue so far as interpleader statutes is concerned has never been definitely decided in all particulars by the United States Supreme Court. The language of the amendment follows that of existing law and has proved satisfactory. It seems, therefore, inadvisable to extend this provision.

7. Interpleader is allowed defensively in actions at law. (Hereinbefore discussed.)

8. The amendment includes repeal and saving clauses which are deemed advisable in perfecting the interpleader statutes.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936. No. [redacted] 34

WORCESTER COUNTY TRUST COMPANY, Executor,

Petitioner,

vs.

RAY L. RILEY, Controller of the State of California; W. H. H. GENTRY, Inheritance Tax Attorney of the State of California, and FRANK P. SPROUL, Inheritance Tax Appraiser of the State of California,

Respondents.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

MOTION OF THE STATE OF NEW JERSEY FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*, AND BRIEF AS *AMICUS CURIAE*.

DAVID T. WILENTZ,
Attorney-General of New Jersey,

WILLIAM A. MOORE,
Assistant Attorney-General of New Jersey,
State House, Trenton, New Jersey.

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On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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MOTION OF THE STATE OF NEW JERSEY FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE.*

COMES Now the State of New Jersey, by its Attorney-General, and moves this Honorable Court for leave to file the annexed brief in this case as *amicus curiae.*

DAVID T. WILENTZ,
Attorney-General of New Jersey,

WILLIAM A. MOORE,
Assistant Attorney-General of New Jersey,
Attorneys for State of New Jersey
as amicus curiae.

IN THE

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BRIEF OF STATE OF NEW JERSEY AS *AMICUS CURIAE*

PRELIMINARY STATEMENT

In a suit now pending in the United States District Court for the Eastern District of Pennsylvania, entitled *Alpin W. Cameron, Executor under the will of Alpin J.*

Cameron, deceased, vs. *Charles J. Margiotti, individually and as Attorney-General of the Commonwealth of Pennsylvania, et als., and David T. Wilentz, individually and as Attorney-General of the State of New Jersey, et als.* (December Term, 1936, No. 9639), the tax-enforcement officers of the Commonwealth of Pennsylvania and of the State of New Jersey are named as respondents in a bill alleged to be a "Bill in the nature of an interpleader," and allegedly brought pursuant to the provisions of the Federal Interpleader Act, as amended January 20, 1936 (Judicial Code sec. 24(26), as amended by Act of Cong., January 20, 1936, c. 13, sec. 1, 49 Stat. 1096). The bill prays, *inter alia*, for:

(a) Temporary restraint;
(b) Judicial determination of the legal domicile of the testator at the time of his death;
(c) A permanent order enjoining those respondents who are officials of the non-domiciliary State from collecting any *resident* estate or inheritance tax;
(d) A determination of the "person" or "persons" entitled to the fund interpleaded, and the amount to which they are entitled; and
(e) An order discharging the complainant from further obligation to any of the respondents.

Special appearances for the purpose of objecting to the jurisdiction of the court, and motions to dismiss the bill and vacate the temporary restraining order entered therein, were filed by the Attorneys-General and their assistants for the Commonwealth of Pennsylvania and the State of New Jersey. Further action on those motions has been suspended, awaiting the outcome of the petition for writ of certiorari in the case *sub judice*.

There is also pending in the United States District Court for the District of New Jersey, a bill for injunction brought by *Edwin C. Nevin, surviving Executor of the will of Wal-*

ter Ross McShea, dec'd, et als., against J. H. Thayer Martin, State Tax Commissioner of the State of New Jersey, et als., to determine: (a) the legal domicile of Walter Ross McShea, deceased; and (b) the State, whether New Jersey or Pennsylvania, which is legally entitled to collect a *resident* inheritance tax. This proceeding is now pending on a motion to dismiss the bill for want of jurisdiction before a three-judge court convened pursuant to section 266 of the Judicial Code (Mar. 3, 1911, c. 231, sec. 266, 36 Stat. 1162; Mar. 4, 1913, c. 160, 37 Stat. 1013; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 938).

New Jersey's tax claim is approximated in the interpleader bill at $75,000, and the injunction proceeding involves an assessment of $93,614.67.

ARGUMENT

BECAUSE IT SO CLEARLY APPEARS THAT THE CIRCUIT COURT OF APPEALS' RULING THAT THE SUIT IS AGAINST A STATE IS CORRECT, CERTIORARI SHOULD BE DENIED

Because of the Inherent Nature of an Interpleader Suit, it is Certain That a State must be Interpleaded in the Instant Matter if the Relief Prayed for is to be Granted.

In the present suit, the Worcester County Trust Company, as executor of the will of Robert H. Hunt, deceased, is endeavoring by its bill, alleged to be in the nature of an interpleader, to obtain a declaration of domicile of said decedent by a Federal court and a determination of the State to which it is legally liable for *resident* inheritance taxes. In the prosecution of this suit it appears that the following have been accepted as postulates by the parties and the courts below alike:

(1) That a State, because of the Eleventh Amendment, is not subject to suit in the Federal courts by one of its own citizens, or by a citizen of another State, without its consent.

Ex Parte State of New York, No. 1, 256 U. S. 490, 497.

Monaco vs. *Mississippi*, 292 U. S. 313.

(2) That a suit against officers and agents of a State acting wrongfully, i.e., in an *authorized* manner under an *invalid* statute,

Terrace vs. *Thompson*, 263 U. S. 197;
Public Service Co. vs. *Corboy*, 250 U. S. 153;
Cavanaugh vs. *Looney*, 248 U. S. 453;
Ex Parte Young, 209 U. S. 123;
Smyth vs. *Ames*, 169 U. S. 466;

or in an *unauthorized* manner under a *valid* statute,

Sterling vs. *Constantin*, 287 U. S. 378;
Greene vs. *Louisville & Interurban R. Co.*, 244 U. S. 499, 507;
Reagan vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 390;

is not a suit against the State.

(3) That a suit against officers and agents of a State acting rightfully, i.e., pursuant to authority conferred by a *valid* statute is a suit against the State.

Missouri vs. *Fiske*, 290 U. S. 18, 25, 26.
In re Ayers, 123 U. S. 443, 505.
Ex Parte State of New York, No. 1, *supra* (at p. 500).

(4) Whether a suit is, in fact, against a State, is not to be determined by the mere names of the titular parties, but by the essential nature and effect of the proceeding as it appears from the entire record.

Ex Parte State of New York, No. 1, *supra* (at p. 500).
Hopkins vs. *Clemson College*, 221 U. S. 636, 642.

(5) A State is not a citizen.

City Bank Farmers' Trust Co. vs. *Schnader*, 291 U. S. 24, 29.

State Highway Commission vs. *Utah Construction Co.*, 278 U. S. 194, 199, 200.

And the bill appears to be based upon the premise that the group of taxing officials representing the State of California, *or* the taxing official representing the State of Massachusetts, is acting rightfully, and that the State which it or he represents has a valid claim to some portion of the fund interpleaded.

As observed in the opinion of Judge Brewster (R. 26-37; reported in 14 F. Supp. 754), it is well settled that officers of a State attempting to enforce an unconstitutional statute, or acting in an unconstitutional manner under an admittedly constitutional statute, may be sued in their individual or personal capacities as wrong-doers without involving the State which they purport to represent as a necessary party to the litigation (see particularly R. 32-34). It is equally well settled, as stressed in the majority opinion of the Circuit Court of Appeals (R. 43-57), that if individuals sued as agents and representatives of the State are acting pursuant to a valid statute and in a lawful manner, the State itself is the real party to the suit. The former is maintainable against the individuals without the consent of the State, but not so as to the latter, and any attempt to subject the State to suit by naming its officers and agents, violates the Eleventh Amendment the same as if the suit were instituted directly against the State.

The dissenting opinion of Judge Morton points out that it (R. 58)

> "is inherent in suits in the nature of interpleader, that one claimant is adjudged to have a good claim against the plaintiff, and the other not."

Because this is so, does not the solution of the issue here involved lie in the answer to the simple *quaere,* Is it possible to bring a suit of this nature to a final conclusion, without deciding that one group of officials is acting rightfully? If the answer be—and it would seem to be inevitable—that the suit may not be finally concluded without reaching such a determination, then it must necessarily follow that it cannot be maintained in face of the Eleventh Amendment, because the instant it is determined that one group is acting wrongfully (and, therefore, for themselves) and the other group is acting rightfully (and, therefore, for the State), it is made clear that a State would be impleaded against individuals.

Even the rule that jurisdiction is to be determined by the allegations of the bill and "not by the way the facts turned out, or by a decision on the merits" (*Mosher* vs. *Phoenix,* 287 U. S. 29, 30), would not appear to change the situation in this particular type of suit, since it is clear from the bill, and it is also as clear from the start of the suit as it would be at the end, that at least one of the two groups of State officials must be held to have acted rightfully and, therefore, that the State which it represents must finally be drawn into the litigation.

Even the District Court, in reaching the conclusion that it had jurisdiction, recognized that it could not adjudicate beyond a determination of the legal domicile of the testator at the time of his death. Judge Brewster, in his opinion, says that (R. 37):

> "* * * I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State."

This would seem to be a tacit admission that a State must ultimately come into the suit and that when it does the court may act no further.

Because a State is not a "Citizen" and Cannot Make Itself Such by Consenting to be Sued, There is an Absence of Diversity of Citizenship Between the Claimants.

Further, since a State is not a *citizen,* and even its consent to suit does not make it such,

> *State Highway Commission* vs. *Utah Construction Co.,* 278 U. S. 194, 199, 200;
> *Minnesota* vs. *Northern Securities Co.,* 194 U. S. 48, 63;
> *Postal Telegraph Cable Co.* vs. *Alabama,* 155 U. S. 482, 487;

there is lack of diversity of citizenship between the *claimants,* which is indispensable to the maintenance of an interpleader suit under section 24(26) of the Judicial Code. As ruled by this court in *State Highway Commission* vs. *Utah Construction Co., supra* (pp. 199, 200):

> "* * * No consent by the State to submit itself to suit could affect the question of diverse citizenship."

Since this is a statutory proceeding, even the presence of a substantial Federal question would not alter the situation because the act does not confer jurisdiction upon the District Court where a Federal question is involved. It is not essential that there be a Federal question, and the presence of such a question cannot therefore cure the defect arising from the absence of diversity of citizenship between the claimants:

It is not to be understood from what has just been said that there is, in fact, a Federal question present. As observed by the Circuit Court (R. 52), the bill does not allege action by either group of officials under an unconstitutional statute, or the application in an unconstitutional manner of a constitutional statute. There is no claim that the laws of California or Massachusetts are invalid, or that

either or both of the groups has, arbitrarily, and without evidence, determined that the testator's domicile was within their respective States.

The principles governing injunction proceedings brought pursuant to section 266 of the Judicial Code are not controlling here.

It is important to bear in mind that the position of respondents in a suit brought under the Interpleader Act is quite different from that of defendants in an injunction suit brought pursuant to section 266 of the Judicial Code. In the latter there is but a single group of State officials and a single purpose, and that is to enjoin that group from carrying out some alleged unauthorized act, while in the former, there are two groups of officials and there are two purposes, viz., (a) to enjoin the group acting wrongfully; and (b) to determine the tax due to the group, or to put it a little more accurately, due to the State whose officers have been found to have acted rightfully.

The case of *City Bank Farmers' Trust Co.* vs. *Schnader*, 291 U. S. 24, a proceeding in which it was sought to enjoin the taxing officials of the State of Pennsylvania from attempting to collect a non-resident tax on the transfer of tangible personal property physically located within that State, is, therefore, clearly distinguishable from the situation involved in the instant matter. Because the officers of the State of Pennsylvania were held to have acted properly, the bill was dismissed. Had it been determined that they were acting improperly, permanent injunction would have issued against them. In neither instance would it have been necessary to bring the State into the litigation. Not so here, however, because that group of officers which is ultimately determined to be acting properly, or, rather, the State for which they are acting, is entitled to a money decree to the extent of the tax determined to be due to it and that State must, therefore, be brought into the suit.

The presence in this suit of a general appearance and answer by one of the claimants is not a decisive factor.

While it is true in the instant matter that a general appearance was entered and an answer filed on behalf of the State Tax Commissioner of the State of Massachusetts (a condition, incidentally, which is not present in *Cameron* vs. *Margiotti, et als., supra*), it is not believed that that circumstance can alter the answer to the broad question as to whether or not the Federal Interpleader Act, as amended, is unconstitutional if extended to include a proceeding against officers and agents of two or more States, and even if we assume for the sake of argument that this action amounted to a consent to be sued on the part of one of the claimants, still it could not convert the State into a *citizen* for the purpose of meeting the diversity of citizenship requirement of subsec. "(i)" of the Interpleader Act. (See authorities cited, *supra,* p. 8.) This fact was before the Circuit Court of Appeals and there is no intimation to be found in its opinion that it in any way influenced the problem.

CONCLUSION

There is every evidence in the opinion of the Circuit Court of Appeals of an exhaustive study of the problem presented, and in reaching the conclusion that it did, it has applied only those principles which have been well established by the repeated decisions of this court. It is believed that the Circuit Court of Appeals' determination will settle the question for the other circuits where similar suits are pending, and it is respectfully submitted, therefore, that the determination of that court that the instant suit cannot be maintained, because it constitutes a proceeding against a State in violation of the Eleventh Amendment, appears to be so clearly correct that no useful purpose can

be served by prolongation of this litigation, and that the petition for certiorari should, therefore, be denied.

DAVID T. WILENTZ,
Attorney-General of New Jersey,

WILLIAM A. MOORE,
Assistant Attorney-General of New Jersey,
Attorneys for State of New Jersey
as amicus curiae.

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No. [redacted] 34

In the Supreme Court of the United States

OCTOBER TERM, 1936

WORCESTER COUNTY TRUST COMPANY, EXECUTOR,

PETITIONER

vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA, W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA

and

FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA.

RESPONDENTS.

MOTION OF HADASSAH THOMPSON BOYER, EXECUTRIX AND ANCILLARY EXECUTRIX OF THE ESTATE OF MARY MARTHA REED, DECEASED, FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE, AND BRIEF OF AMICUS CURIAE.

JAMES A. REED
OF KANSAS CITY, MO.
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OF CEDAR RAPIDS, IOWA

Attorneys for Hadassah Thompson Boyer, Executrix and Ancillary Executrix of the estate of Mary Martha Reed, deceased, as Amicus Curiae.

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vs.

RAY L. RILEY, CONTROLLER OF THE STATE OF CALIFORNIA,
W. H. H. GENTRY, INHERITANCE TAX ATTORNEY OF THE STATE OF CALIFORNIA
and
FRANK P. SPROUL, INHERITANCE TAX APPRAISER OF THE STATE OF CALIFORNIA.

RESPONDENTS.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

MAY IT PLEASE THE COURT:

The undersigned, as counsel for Hadassah Thompson Boyer, executrix and ancillary executrix of the estate of Mary Martha Reed, deceased, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiae.

JAMES A. REED, OF KANSAS CITY, MO.
DON BARNES, C. E. RICHMANN,
OF CEDAR RAPIDS, IOWA
Counsel for Hadassah Thompson Boyer, Executrix and Ancillary Executrix for the estate of Mary Martha Reed, deceased as amicus curiae.

No. 922

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RESPONDENTS.

BRIEF OF HADASSAH THOMPSON BOYER, EXECUTRIX AND ANCILLARY EXECUTRIX OF THE ESTATE OF MARY MARTHA REED, DECEASED, AS AMICUS CURIAE.

I

PRELIMINARY STATEMENT

Mary Martha Reed died testate in Portland, Oregon, on September 9, 1935. By her Will, Hadassah Thompson Boyer, residing in the city of Portland, Oregon, was appointed executrix by the Probate Court at Portland. She was also appointed ancillary executrix by the District Court of Linn County, Iowa. The deceased died seized of certain real estate situated in the State of Iowa and certain tangible personal property both in

Cedar Rapids, Iowa, and in the State of Oregon. The deceased also left certain bank deposits and certain intangible personal property in the State of Iowa consisting of bank deposits, stocks, bonds, notes and mortgages.

The Treasurer of the State of Oregon has assessed, and is attempting to collect, Inheritance taxes upon said Iowa intangibles, as is also the Treasurer of the State of Iowa. And, the County Treasurer of Linn County, Iowa, is also attempting to collect a monies and credits tax upon said Iowa intangibles. The tax officials of each state claim the right to assert and collect said taxes upon the theory that at the time of the death of the deceased, said property had its situs in their respective states.

The Amicus Curiae, by reason of such conflicting claims, filed a bill in the nature of a Bill of Interpleader in the United States District Court for the Northern District of Iowa, Cedar Rapids Division and secured an order restraining the tax officials of both states from taking steps to assess, determine or collect inheritance taxes from the said estate of the said Mary Martha Reed, deceased, and also the County Treasurer of Linn County, Iowa, from assessing or attempting to collect a Monies and Credits tax against the said Iowa Intangibles. The bill prayed particularly for a determination of the situs of said property in order to ascertain which ta.. officials are proceeding illegally. The aforesaid case involves similar questions of law as those involved in the instant case pending before your Honorable Court for Writ of Certiorari and the decision of your Honorable Court in the said case will affect the case pending in the District Court of the

United States for the Northern District of Iowa, Cedar Rapids Division.

II

ARGUMENT

That the questions involved in the instant case are of such general importance as to justify their being passed upon by your Honorable Court is manifest when considered in connection with the number of cases now pending or threatened involving the same or similar issues and the hardships resulting from a denial of the remedy sought.

It is apparent that the representatives of estates find themselves in a serious dilemma when confronted by the taxing officials of more than one state, each claiming to be entitled to Inheritance Taxes based either upon an inconsistent claim of domicile or of situs of the property. The injustice sought to be avoided is apparent. There must be some remedy in the Federal Courts against such an unjust result and the most logical and appropriate relief is the application of Section 24 of the Judicial Code, as amended by the Act of January 20, 1936, to the situation. The Dorrance Litigation, (*Hill vs. Martin*, 296 U. S. 393; 80 Law. Ed. 293), warns of possibilities of danger in procedure which cannot be put aside as visionary and calls for the applicability of the Federal Interpleader Act in order to avoid the unjust results of possible multiple inheritance taxation. It is submitted that the Federal Interpleader Act furnishes the only prompt, certain and efficient remedy in the circumstances.

As to the law involved, we cannot add to the able argument presented by the Petitioner.

It is respectfully submitted that the petition for Writ of Certiorari in the instant case should be granted in order that the course of procedure to be followed in a growing list of vexatious cases may be made known for the guidance and protection of Executors and Administrators in the future.

Respectfully submitted,

JAMES A. REED
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DON BARNES
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RAY L. RILEY, CONTROLLER, ET AL,
Respondents.

No. [redacted] 34

BRIEF OF
JAMES A. BRANCH and DANIEL MacDOUGALD, AS AMICI CURIAE

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Curtiss Printing Company, Inc., Atlanta

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IN THE

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WORCESTER COUNTY TRUST COMPANY,
Executor,
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RAY L. RILEY, CONTROLLER, ET AL,
Respondents.

No. 922

BRIEF OF JAMES A. BRANCH and DANIEL MacDOUGALD, AS AMICI CURIAE

The undersigned James A. Branch and Daniel MacDougald respectfully ask leave of the Court to file the following brief as amici curiae herein.

The undersigned appear as counsel of record for Hughes Spalding and Julian Riley, as executors of the will of Julia M. Hungerford in the case of Spalding and Riley, executors, v. Homer C. Parker, et al., of and constituting the State Revenue Commission of Georgia, and Mark Graves, et al., of and constituting the State Tax Commission of the State of New York, No. 343, Equity, in the District Court of the United States for the Southern District of Georgia, Savannah Division, wherein identical questions of law involved in this case are presented for determination.

Counsel for the petitioner herein and counsel for the respondents herein have consented to the filing of this brief.

We respectfully urge that the petition for certiorari be granted, because: the question whether the Federal Interpleader Act, as amended January 20th 1936 (section 24 (26) of the Judicial Code, as amended January 20th 1936) affords an available remedy to representatives of the estate of a deceased person where there are threats from the taxing authorities of two or more states to assess and collect inheritance or succession taxes on the intangibles belonging to such estate under conflicting and inconsistent claims that each of such states was the state of the domicile of the decedent, is a question of widespread public interest and of vital concern and should be authoritatively settled by the decision of this Court.

1.

Unless the present Federal Interpleader Act affords an available remedy in such cases, there is the ever present possibility and danger of the estate being required to pay inheritance or succession taxes in two, or even more, states upon the same taxable event, as having occurred at the same time, and with respect to the same property, in each of two or more states.

Although it is now settled that no state may, consistently with due process, impose a tax upon a transfer, by death, of intangibles forming a part of the estate of a decedent whose domicile was outside the state (*First National Bank v. Maine*, 284 U. S. 312), there was in many cases, up to the time the present Federal Interpleader Act was enacted, no available effective remedy to prevent the exaction of such a tax by two or more states on conflicting and inconsistent claims that the decedent was domiciled in each of such states; because,

where the question had to be tried separately as to each state, a finding of existence of domicile in one of the states was not binding, or even admissible, on the claim of any other state; and, since the Fourteenth Amendment does not assure uniformity of judicial decisions or immunity from judicial error (*Milwaukee Electric Railway & Light Company v. Wisconsin*, 252 U. S. 100, 106), there was no practical recourse in such cases against conflicting and inconsistent decisions as to such domicile.

2.

It is respectfully urged that the present Federal Interpleader Act is available in such cases as against the objection urged to it, and applied by the Circuit Court of Appeals of the First Circuit, in the majority opinion, that the respondents "are sued as representatives and agents of" their respective states and, therefore, "that the states themselves have been interpleaded"; that the adverse claimants are not "citizens of different states". The Act (Judicial Code, section 24 (26)) provides that it is available where "two or more adverse claimants, citizens of different states, are claiming to be entitled to such money or property, or to any one or more of the benefits arising * * * by virtue of any such obligation". It has often been held by this Court that the prohibitions and guarantees of the Fourteenth Amendment are addressed to, and control, not only the states, but also every person, whether natural or juridical, who is the repository of state power, and that recourse may be had to the Federal courts to prevent a violation of the provisions of the Fourteenth Amendment by such persons; that (although the provisions of the Fourteenth Amendment do not apply as between private individuals) anyone who is in possession of state power and attempting to use that power to the doing of the wrongs which the amendment forbids may be prevented

from so doing by a Federal court. *Home Telephone & Telegraph Company v. Los Angeles*, 227 U. S. 278; *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239.

a) If such a suit is to be regarded as one against the state, as distinguished from one against officials of the state in possession of state power, and who are attempting to use that power for the doing of the wrongs which the Fourteenth Amendment forbids, then the Federal courts might be deprived of jurisdiction by virtue of the provisions of the Eleventh Amendment.

In discussing this question in *Home Telephone & Telegraph Company v. Los Angeles*, 227 U. S. 278, 285, Mr. Chief Justice White, speaking for the court, said:

> "It is manifest that, in necessary operation, the doctrine which was sustained would, in substance, cause the state courts to become the primary source for applying and enforcing the constitution of the United States in all cases covered by the 14th Amendment.
>
> "It would certainly be open to controversy if the proposition were carried to its logical result, whether the only right under the 14th Amendment, which the proposition admits, to exert Federal judicial power growing out of wrongful acts of state officers, would not be unavailing. This naturally suggests itself, since, if there be no right to exert such power until, by the final action of a state court of last resort, the act of a state officer has been declared rightful and to be the lawful act of the state as a governmental entity, the inquiry naturally comes whether, under such circumstances, a suit against the officer would not be a suit against the state, within the purview of the 11th Amendment. The possibility of such a result, moreover, at once engenders a further inquiry; that is, whether the effect of the

proposition would not be to cause the 14th Amendment to narrow Federal judicial power instead of enlarging it and making it more efficacious. * * *

"To repeat: for the purpose of enforcing the rights guaranteed by the Amendment when it is alleged that a state officer, in virtue of the state power, is doing an act which, if permitted to be done, prima facie would violate the Amendment, the subject must be tested by assuming that the officer possessed power if the act be one which there would not be opportunity to perform but for the possession of some state authority. * * *

" 'Congress, by virtue of the fifth section of the 14th Amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial department of the state. The mode of enforcement is left to its discretion.' "

b) Whenever a state official, who purports to act under state authority and power, is sued in a Federal court to prevent the consummation of a wrong under color of state authority, the question is involved whether such state official is acting under, and in accordance with, a valid law of the state, and not contrary to the provisions of the Federal Constitution. If it is determined that he is so acting, then the suit fails. Otherwise, it cannot be regarded as a suit against the state. *Traux v. Raich*, 239 U. S. 33.

c) It would therefore seem to follow that, on the one hand, in order for the provisions of the Fourteenth Amendment to apply, and for the Federal courts to have jurisdiction on that ground, the action of the state authorities, sought to be prevented, must be regarded as the action of the state, or, at least, of the officers acting as representatives of the state (*Raymond v. Chicago Union Traction Company*, 207 U. S.

20; *Home Telephone & Telegraph Company v. Los Angeles*, 227 U. S. 278); and, on the other hand, if a suit to prevent such action is regarded as one against the state, then, under the Eleventh Amendment, the Federal courts are without jurisdiction to entertain the suit.

d) We therefore submit that it does not follow that because the respondents were sued as representatives and agents of their respective states the court was without jurisdiction on the ground that "the states themselves have been interpleaded", or that jurisdiction is defeated on the ground that the adverse claimants are not "citizens of different states". *Chicago Great Western Railway Company v. Kendall*, 266 U. S. 94; *Sterling v. Constantin*, 287 U. S. 378.

In *Chicago Great Western Railway Company v. Kendall*, *supra*, suit was brought in the District Court of the United States against the governor, the secretary of state, the auditor and the treasurer, and another, constituting the executive council of the State of Iowa. The suit was by an Illinois corporation, Chicago Great Western Railway Company. It was said by the Court, Mr. Chief Justice Taft delivering the opinion: (page 97)

> "Jurisdiction of the bill * * * exists because of the diverse citizenship of the parties."

3.

It is also submitted that the fact that the officials of one of the states will be found to have been acting under, and not contrary to, valid state laws—it being uncertain which set of officials are so acting—would not deprive the court of jurisdiction any more than would be true in any case where it is uncertain whether the officials of a single state who are

sued on the theory that they are acting contrary to law, or under an unconstitutional enactment. The fact that the case, on its merits, is decided in favor of the officials sued does not lead to the conclusion that the court was without jurisdiction to entertain the suit. Compare: *Chicago Great Western Railway Company v. Kendall*, 266 U. S. 94, where it was held that the district court of the United States had jurisdiction but the case was decided, on its merits, in favor of the taxing officials.

In the instant case petitioner could, aside from the question of venue, have instituted separate suits against the respondents without violence to the Eleventh Amendment. Surely, this is sufficient basis for the right to interplead these respondents. The Interpleader Act removes any difficulty as to venue.

4.

Another reason urged by the respondents, and held by the court below, why the act is not applicable to cases of this character is that the act provides:

> "(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same."

It is said that this provision of the act cannot be complied with for the reason that the state is the real party at interest and a discharge against the officials would not be binding upon the state. It seems to us, and we respectfully submit, that a permanent injunction granted by the court against the officials of that state which is found to be the non-domiciliary state would, to all intents and purposes, operate as a dis-

charge of the complainant from further liability to those officials, and the state which they represent, just as much so as in the numerous cases where the Federal courts have enjoined taxing officials of states from exacting taxes in violation of the provisions of the Fourteenth Amendment.

This provision of the act does not require that the final discharge shall be granted immediately upon the granting of the judgment of interpleader. The final discharge from liability may, under the terms of the act, be withheld until all questions involved in the cause are determined and the decree of the court complied with.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California,
W. H. H. GENTRY, Inheritance Tax Attorney
of the State of California,

and

FRANK P. SPROUL, Inheritance Tax Appraiser of the
State of California,
Respondents.

BRIEF OF *AMICI CURIAE.*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936. No. 922.

Worcester County Trust Company, Executor,
Petitioner,

v.

Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California,

and

Frank P. Sproul, Inheritance Tax Appraiser of the State of California,
Respondents.

BRIEF OF GIRARD TRUST COMPANY AND HARRY L. MAGEE, ADMINISTRATORS *PENDENTE LITE* OF THE ESTATE OF ELLA G. MAGEE, DECEASED, AS *AMICI CURIAE.*

I.

PRELIMINARY STATEMENT.

Ella G. Magee died on January 13, 1937. A controversy having arisen between Harry L. Magee, son and

next of kin of the decedent, and Girard Trust Company, Executor named in her alleged last Will and codicils as to the validity of said Will and codicils, Letters of Administration *pendente lite* were granted on January 22, 1937, to Harry L. Magee and the Girard Trust Company by the Register of Wills of Columbia County in the Commonwealth of Pennsylvania.

The decedent left a large amount of real estate and personal property located and situated in the Commonwealth of Pennsylvania, which is now in the custody of the administrators *pendente lite*. The decedent at the time of her death left tangible personal property having a value of $325.00 situated in the State of Kentucky.

The tax officials of each State are seeking the benefit of the fiduciary obligations of the *amici curiae* as administrators *pendente lite* to settle all inheritance taxes. The tax officials of the State of Pennsylvania assert an inheritance tax due that State based on their claim of domicile in Pennsylvania. The tax officials of Kentucky assert an inheritance tax due that State based on their claim of domicile in Kentucky.

The *amici curiae,* by reason of such conflicting and inconsistent claims, filed a Bill in the Nature of an Interpleader in the District Court for the Eastern District of Pennsylvania and secured an Order restraining the tax officials of both States from taking steps to assess, determine or collect inheritance

taxes from the Magee Estate. The Bill prayed particularly for a determination of the domicile of the decedent in order to ascertain which tax officials are proceeding illegally. A copy of the Bill is annexed hereto and made a part hereof as Exhibit "A."

The aforesaid case involves similar facts and questions of law as those involved in the instant case pending before your Honorable Court on Petition for Writ of Certiorari and the decision of your Honorable Court in the said case will affect the case pending in the District Court of the United States for the Eastern District of Pennsylvania.

II.

ARGUMENT.

The importance of having your Honorable Court pass upon the question involved in the instant case is manifest when one considers the number of cases now pending involving the same issue and the hardships resulting from the denial of the remedy sought.

The anomaly and injustice sought to be avoided is the apparent one that it may be decided that the decedent at the time of her death was a resident of two states and her Estate subject to inheritance tax by both, when one conclusion must be wrong. There must be some remedy in the Federal Courts against such an unjust result and the most logical and appropriate relief is the application of Section 24 of the

Judiciary Code, as amended by the Act of January 20, 1936, to the situation.

As to the law involved we cannot add anything to the able argument presented by the petitioner.

It is respectfully submitted that the Petition for a Writ of Certiorari in this case should be granted in order that the course of procedure to be followed in this growing list of vexatious cases may be made known for the guidance and protection of Executors and Administrators in the future.

Respectfully submitted,

WILLIAM N. TRINKLE,
FRANK F. TRUSCOTT,
MAURICE BOWER SAUL,
Attorneys for Girard Trust Company and Harry L. Magee, Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, as *amici curiae*.

APPENDIX.

EXHIBIT "A."

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MARCH TERM, 1937. No. 9695.

Girard Trust Company and Harry L. Magee, Administrators pendente lite of the Estate of Ella G. Magee, deceased,

v.

Charles J. Margiotti, individually and as Attorney General of the Commonwealth of Pennsylvania, John B. Kelly, individually and as Secretary of Revenue of the Commonwealth of Pennsylvania, Carl H. Fleckenstine, individually and as Register of Wills for the County of Columbia, Commonwealth of Pennsylvania,

and

Beverly Vincent, individually and as Attorney General of the State of Kentucky, John Buckingham, individually and as State Treasurer of the State of Kentucky, James W. Martin, individually and as Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, individually and as Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, individually and as Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, individually and as Head of Inheritance Tax Section of the State of Kentucky.

BILL IN THE NATURE OF AN INTERPLEADER.

Girard Trust Company and Harry L. Magee, Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, bring this bill under the provisions of the Federal Interpleader Act as amended, being Public Act #422 of the 74th Congress, and complain and say:

1. That Girard Trust Company is one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and is a corporation organized under the laws of the Commonwealth of Pennsylvania with its principal office and place of business at the Northwest Corner of Broad and Chestnut Streets in the City of Philadelphia, Commonwealth of Pennsylvania.

2. That Harry L. Magee is one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and that he is a citizen of the United States and resides at the Town of Bloomsburg, Columbia County, Commonwealth of Pennsylvania.

3. That the defendant, Charles J. Margiotti, is a citizen of the United States and a resident of Pittsburgh, Allegheny County, Commonwealth of Pennsylvania, and is the duly appointed and qualified Attorney General of the Commonwealth of Pennsylvania.

4. That the defendant, John B. Kelly, is a citizen of the United States and a resident of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania, and is the duly appointed and

qualified Secretary of Revenue of the said Commonwealth and as such the administrative head of the Department of Revenue of the Commonwealth of Pennsylvania.

5. That the defendant, Carl H. Fleckenstine, is a citizen of the United States and a resident of the Town of Bloomsburg, County of Columbia, Commonwealth of Pennsylvania, and is the duly appointed and qualified Register of Wills for the County of Columbia, Commonwealth of Pennsylvania.

6. That the defendant, Beverly Vincent, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified Attorney General of the State of Kentucky.

7. That the defendant, John Buckingham, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified State Treasurer of the State of Kentucky.

8. That the defendant, James W. Martin, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified Commissioner of Revenue of the State of Kentucky.

9. That the defendant, Cassius M. C. Porter, is a citizen of the United States and a resident of Frankfort, Kentucky, and is one of the duly appointed and qualified Associate Tax Commissioners of the State of Kentucky.

10. That the defendant, Emory G. Dent, is a citizen of the United States and a resident of Frankfort, Kentucky, and is one of the duly appointed and qualified Associate Tax Commissioners of the State of Kentucky.

11. That the defendant, Florence Lutkemeier, is a citizen of the United States and a resident of Frankfort, Kentucky, and is the duly appointed and qualified head of the Inheritance Tax Section of the State of Kentucky.

12. On the 13th day of January, 1937, Ella G. Magee departed this life at Cynthiana, Kentucky, to the best of complainants' knowledge, information and belief a citizen and resident of the Commonwealth of Pennsylvania, having resided at First and West Streets, in the Town of Bloomsburg, Columbia County, Commonwealth of Pennsylvania.

13. A controversy having arisen between Harry L. Magee, one of the complainants, the son and next of kin of the decedent, and Girard Trust Company, one of the complainants, the Executor named in her alleged last Will and Codicils as to the validity of the said Will and Codicils, on the 22nd day of January, 1937, Letters of Administration *pendente lite* were granted to complainants by the Register of Wills of Columbia County in the Commonwealth of Pennsylvania, and the said Administrators *pendente lite* duly qualified and entered bond for the faithful per-

formance of their duties as required by the laws of the Commonwealth of Pennsylvania. A copy of the said Letters of Administration *pendente lite* is annexed hereto and made a part hereof and marked Exhibit "A."

14. The said Ella G. Magee died possessed of certain real and personal property of a value in excess of approximately two million dollars, more particularly described as follows:

Stocks	$695,000.00
Bonds	1,094,000.00
Mortgages and Pool Trust Investments	72,000.00
Cash	70,000.00
Real Estate (all situate in the Commonwealth of Pennsylvania)	69,000.00

All of the said property, real and personal, was physically located and situated in the Commonwealth of Pennsylvania at the time of the death of the said decedent.

The only asset of the said decedent situated or located in the State of Kentucky at the time of her death, other than clothing of no value, was an automobile of an estimated value of $325.

15. Your complainants have in their possession and custody money and property in an amount in value exceeding $500. to which the taxing authorities

of the Commonwealth of Pennsylvania and the State of Kentucky, respondents herein, claim to be entitled adversely to each other, but also under the applicable statutes of Pennsylvania (Act #258, Laws of 1919, as amended and supplemented through Act #21, Special Session Laws of 1936, and Act #859 of the Laws of 1927, as amended through Act #340, Laws of 1935) and Kentucky (House Bill #16, Third Special Session, Laws of 1936, approved and effective April 24, 1936, with the amendments and supplements thereto, if any, since said date), your complainants are under an obligation under the laws of the Commonwealth of Pennsylvania in such case made and provided and the laws of the State of Kentucky in such case made and provided, to pay, adjust and settle any and all estate, inheritance and succession taxes that may be due the Commonwealth of Pennsylvania and the State of Kentucky, irrespective of any demands made therefor, and the said respondent tax authorities of both states are claiming to be entitled to the benefits of said statutes in such case made and provided, on the theory that the said Ella G. Magee died a resident of the state for which said respondent authorities are respectively acting.

16. Your complainants are informed and believe and therefore aver that under the provisions of said taxing statutes of each of the said states a tax lien is imposed on all of the property of the estate of Ella G. Magee of which your complainants are Administrators

pendente lite until all taxes assessed by said states are paid and that the respondents will claim and are claiming to be entitled to the benefit of such liens.

17. Your complainants are informed and believe and therefore aver that the respondents, Charles J. Margiotti, Attorney General as aforesaid, and John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Carl H. Fleckenstine, Register of Wills of the County of Columbia, as aforesaid, have determined that the said Ella G. Magee died domiciled in the Town of Bloomsburg, County of Columbia, Commonwealth of Pennsylvania, and are asserting and have threatened and are about to assess and attempt to collect from your complainants and the estate in their charge estate and succession taxes under the provisions of the statutes of the Commonwealth of Pennsylvania in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $34,400. should it be held that the decedent died intestate, or $157,600. should her alleged last Will and Codicils be probated, and that if the said Ella G. Magee died a non-resident of and not domiciled in the Commonwealth of Pennsylvania, the estate and succession taxes under the laws of the Commonwealth of Pennsylvania in such case made and provided would be a comparatively small amount.

18. Your complainants are informed and believe and therefore aver that the respondents, Beverly

Vincent, Attorney General of the State of Kentucky, John Buckingham, State Treasurer of the State of Kentucky, James W. Martin, Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, Head of Inheritance Tax Section of the State of Kentucky, have determined that the said Ella G. Magee died domiciled in Cynthiana, Kentucky, and are asserting and have threatened and are about to assess and attempt to collect from your complainants and the estate in their charge estate and succession taxes under the provisions of the statutes of the State of Kentucky in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $188,000. should it be held that the decedent died intestate, or $251,000. should her alleged last Will and Codicils be probated, and that if the said Ella G. Magee died a non-resident of and not domiciled in the State of Kentucky, the estate and succession taxes under the laws of the State of Kentucky in such case made and provided would be a comparatively small amount.

19. That it is impossible in law or fact for the said Ella G. Magee to have been domiciled at the time of her death in both the Commonwealth of Pennsylvania and the State of Kentucky and it should not be possible for estate, inheritance and succession taxes to

be so asserted, threatened, assessed and collected by the taxing officials of said two states.

20. Your complainants are informed, believe and therefore aver that there is little likelihood of any controversy between your complainants, Administrators *pendente lite* as aforesaid, on the one hand, and the respondents, Charles J. Margiotti, Attorney General as aforesaid and John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Carl H. Fleckenstine, Register of Wills of the County of Columbia, as aforesaid, on the other hand as to Pennsylvania taxes, their computation, assessment and collection, if the question of domicile is finally determined, or of any controversy between your complainants, Administrators *pendente lite,* on the one hand, and the respondents, Beverly Vincent, Attorney General of the State of Kentucky, John Buckingham, State Treasurer of the State of Kentucky, James W. Martin, Commissioner of Revenue of the State of Kentucky, Cassius M. C. Porter, Associate Tax Commissioner of the State of Kentucky, Emory G. Dent, Associate Tax Commissioner of the State of Kentucky, and Florence Lutkemeier, Head of Inheritance Tax Section of the State of Kentucky, on the other hand, as to Kentucky taxes, their computation, assessment and collection, if the question of domicile is finally determined, but that the main controversy relates to the sum of between approximately $34,400. (or $137,600., as the case may be) and approximately $188,000. (or $251,000. as the case may

be) in the custody and possession of your complainants and to complainants' obligation with respect thereto, which, under the said tax laws of the said Commonwealth of Pennsylvania and State of Kentucky in such case made and provided, the taxing authorities of which are respectively claiming adversely to one another.

21. The threatened collection of taxes by both the Commonwealth of Pennsylvania and the State of Kentucky, each based upon an inconsistent claim of domicile, will deprive your complainants and the estate in their charge of property without due process of law and deny them equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; the threatened assessment and collection of both said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in the Commonwealth of Pennsylvania and the State of Kentucky, causing extra expense and preventing distribution, and will subject your complainants and the estate to interest charges and penalties if not paid, in the case of the Commonwealth of Pennsylvania at the expiration of one year, and in the case of the State of Kentucky within eighteen months after the date of the death of the said decedent.

22. Your complainants have no adequate remedy at law, and therefore bring this bill in the nature of an interpleader under the provisions of the Federal In-

terpleader Act, as amended, being Public Act #422 of the 74th Congress, a copy of which is annexed hereto as Exhibit "B."

23. Your complainants have given bond payable to the Clerk of your Honorable Court in such amount and with such surety as this Court has deemed proper conditioned upon compliance by your complainants with a future order or decree of this court with respect to the subject matter of this controversy.

Wherefore your complainants pray:

(1) That this court enter a temporary restraining order enjoining the respondents and each of them, their agents and servants, until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of the said Ella G. Magee and from taking any action to claim any estate, inheritance or succession tax from the Estate of Ella G. Magee, or Girard Trust Company and Harry L. Magee as Administrators *pendente lite* of the said estate.

(2) That this court determine the domicile of the said Ella G. Magee at the time of her death and thereupon enter a permanent order enjoining those respondents who are officials of the non-domiciliary state, their agents and servants, from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined by your Honorable Court.

(3) That each of the respondents be required to set forth and plead their several adverse claims to said

money and property in the custody and possession of your complainants and to any one or more of the benefits arising by virtue of the complainants' obligation to pay estate, inheritance or succession taxes on account of the death of the said Ella G. Magee.

(4) That this court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainants' said obligation to pay said taxes.

(5) That this court determine the amount owed to any one or more of the respondents by your complainants.

(6) That this court adjudge that your complainants are under no further obligation to any one or more of the respondents upon compliance by your complainants with such decree as this court may make in the premises.

(7) That your complainants be awarded their costs, including a reasonable attorneys' fee to be deducted from any amount which may be decreed due to respondents or any of them.

(8) That this court order such other and further relief as is proper under the circumstances.

GIRARD TRUST COMPANY,

By

G. L. BISHOP, JR.,
Vice-Pres't.

HARRY L. MAGEE,
Administrators *pendente lite* of the Estate of Ella G. Magee, deceased.

COMMONWEALTH OF PENNSYLVANIA }
CITY & COUNTY OF PHILADELPHIA } *ss:*

G. L. BISHOP, JR., being duly sworn according to law, deposes and says that he is Vice-President of Girard Trust Company, one of the Administrators *pendente lite* of the Estate of Ella G. Magee, deceased, and that the facts set forth in the foregoing Bill are true and correct to the best of his knowledge, information and belief.

G. L. BISHOP, JR.

Sworn to and subscribed before me this 22nd day of March 1937.

[Notarial Seal.]

NELLIE S. LEEDS,
Notary Public.
My Commission expires June 27th, 1940.

EXHIBIT "A."

LETTERS OF ADMINISTRATION *Pendente Lite.*

COLUMBIA COUNTY, SS:

I, CARL H. FLECKENSTINE, Register for the Probate of Wills and granting of Letters of Administration, in and for the County of Columbia, and State of Pennsylvania: To Harry L. Magee & Girard Trust Company.

WHEREAS, The said Ella G. Magee lately died on January 13, 1937 a resident of and domiciled in Bloomsburg, Col. Co. Penna. having, while She lived and at the time of Her death, divers goods and chattels, rights and credits within the said County; by means whereof, and the laws and usages of this Commonwealth the power of granting Letters of Administration thereof, is in me vested,

I, THEREFORE in order that the goods and chattels, rights and credits, which were of the said deceased, may be well and truly administered, converted and disposed of, according to law, do hereby grant unto the said Harry L. Magee & Girard Trust Company full power to administer the goods and chattels, rights and credits which were of the said deceased, and also to ask, levy, recover and receive the credits, whatsoever of the said deceased, which at the time of Her death were owing to or did in any way belong to Her

and to pay the debts in which the said deceased stood obliged so far as the said goods and chattels, rights and credits, will extend according to their rate and order of law, And I do hereby require you, the said Harry L. Magee & Girard Trust Company upon your solemn oath, well and truly to administer the goods and chattels, rights and credits, of said deceased according to law, and also diligently and faithfully to regard, and well and truly comply with the law relating to collateral inheritances, and I do by these presents ordain, constitute and depute you, the said Harry L. Magee & Girard Trust Company, Administrators *pendente lite* of all and singular, the goods and chattels, rights and credits, which were of the deceased, saving harmless and forever indemnifying me and all other officers against all persons by reason of your administration, aforesaid, and saving all others their rights, etc.

In Testimony Whereof I have caused the seal of the Register's Office of said County to be hereto affixed, dated at Bloomsburg, Pa., the Twenty-Second day of January A. D. one thousand nine hundred and Thirty-seven.

CARL H. FLECKENSTINE,
Register of Wills.

[Seal of Register of Wills Columbia Co., Pa.]

EXHIBIT "B."

[PUBLIC—No. 422—74TH CONGRESS] [S. 1277]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader—twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any

note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligations; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the

said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

I hereby certify that the foregoing is a true and correct copy of the Bill in the Nature of an Interpleader filed of record on the 22nd day of March, 1937, in the District Court of the United States for the Eastern District of Pennsylvania.

R. M. REMICK.

FILE COPY

Office - Supreme Court, U. S
FILED
MAY 20 1937
CHARLES ELMORE CROPLEY
CLERK

No. [redacted] 34

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California,
W. H. H. GENTRY, Inheritance Tax Attorney
of the State of California,

and

FRANK P. SPROUL, Inheritance Tax Appraiser of the
State of California,
Respondents.

BRIEF OF *AMICUS CURIAE.*

MAURICE BOWER SAUL,
2301 PACKARD BUILDING,
PHILADELPHIA, PA.
Attorney for Alpin W. Cameron, Executor
of the Estate of Alpin J. Cameron,
deceased, as *Amicus Curiae.*

SUBJECT INDEX.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936. No. 922.

Worcester County Trust Company, Executor,
Petitioner,

v.

Ray L. Riley, Controller of the State of California, W. H. H. Gentry, Inheritance Tax Attorney of the State of California,

and

Frank P. Sproul, Inheritance Tax Appraiser of the State of California,
Respondents.

BRIEF OF ALPIN W. CAMERON, EXECUTOR OF THE ESTATE OF ALPIN J. CAMERON, DECEASED, AS *AMICUS CURIAE*.

I.

PRELIMINARY STATEMENT.

Alpin J. Cameron died on May 25, 1936. By his Will Alpin W. Cameron was named Executor; duly qualified and was appointed Executor by the Register of Wills in and for the County of Philadelphia, State of Pennsylvania, on June 9, 1936, the date of the

allowance of the Will in Pennsylvania. The deceased left real estate and tangible personal property in New Jersey and real estate and other tangible personal property in Pennsylvania, all of which is in the custody of Alpin W. Cameron.

The tax officials of each State are seeking the benefit of the fiduciary obligations of the *amicus curiae* as executor to settle all inheritance taxes. The tax officials of Pennsylvania assert an inheritance tax due that State based on their claim of domicile in Pennsylvania. The tax officials of New Jersey assert an inheritance tax due that State based on their claim of domicile in New Jersey.

The *amicus curiae,* by reason of such conflicting and inconsistent claims, filed a Bill in the Nature of an Interpleader in the District Court for the Eastern District of Pennsylvania and secured an Order restraining the tax officials of both States from taking steps to assess, determine or collect inheritance taxes from the Cameron Estate. The Bill prayed particularly for a determination of the domicile of the decedent in order to ascertain which tax officials are proceeding illegally. A copy of the Bill is annexed hereto and made a part hereof as Exhibit "A."

The aforesaid case involves similar facts and questions of law as those involved in the instant case pending before your Honorable Court on Petition for Writ of Certiorari and the decision of your Honorable Court in the said case will affect the case pending in the District Court of the United States for the Eastern District of Pennsylvania.

II.

ARGUMENT.

The importance of having your Honorable Court pass upon the question involved in the instant case is manifest when one considers the number of cases now pending involving the same issue and the hardships resulting from the denial of the remedy sought.

The anomaly and injustice sought to be avoided is the apparent one that it may be decided that the decedent at the time of his death was a resident of two states and his Estate subject to inheritance tax by both, when one conclusion must be wrong. There must be some remedy in the Federal Courts against such an unjust result and the most logical and appropriate relief is the application of Section 24 of the Judiciary Code, as amended by the Act of January 20, 1936, to the situation.

As to the law involved we cannot add anything to the able argument presented by the petitioner.

It is respectfully submitted that the Petition for a Writ of Certiorari in this case should be granted in order that the course of procedure to be followed in this growing list of vexatious cases may be made known for the guidance and protection of Executors and Administrators in the future.

Respectfully submitted,

MAURICE BOWER SAUL,
Counsel for Alpin W. Cameron, Executor of the Estate of Alpin J. Cameron, deceased, as *amicus curiae*.

APPENDIX.

EXHIBIT "A."

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

DECEMBER TERM, 1936. No. 9639.

Alpin W. Cameron, Executor under the Will of Alpin J. Cameron, deceased,

v.

Charles J. Margiotti, individually and as Attorney General of the Commonwealth of Pennsylvania, John B. Kelly, individually and as Secretary of Revenue of the Commonwealth of Pennsylvania, Harry V. Dougherty, individually and as Register of Wills for the County of Philadelphia, Commonwealth of Pennsylvania,

and

David T. Wilentz, individually and as Attorney General of the State of New Jersey, and J. Thayer Martin, individually and as State Tax Commissioner of the State of New Jersey, and William H. Albright, individually and as State Treasurer of the State of New Jersey.

BILL IN THE NATURE OF AN INTERPLEADER.

Alpin W. Cameron, Executor under the Will of Alpin J. Cameron, deceased, brings this bill under the provisions of the Federal Interpleader Act as

amended, being Public Act #422 of the 74th Congress, and complains and says:

1. That he is Executor under the Will of Alpin J. Cameron, deceased, that he is a citizen of the United States and resides at 1100 Walnut Street, Philadelphia, Commonwealth of Pennsylvania.

2. That the defendant, Charles J. Margiotti, is a citizen of the United States and a resident of Pittsburgh, Allegheny County, Commonwealth of Pennsylvania, and is the duly appointed and qualified Attorney General of the Commonwealth of Pennsylvania.

3. That the defendant, John B. Kelly, is a citizen of the United States and a resident of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania, and is the duly appointed and qualified Secretary of Revenue of the said Commonwealth and as such the administrative head of the Department of Revenue of the Commonwealth of Pennsylvania.

4. That the defendant, Harry V. Dougherty, is a citizen of the United States and a resident of the City of Philadelphia, County of Philadelphia, Commonwealth of Pennsylvania, and is the duly appointed and qualified Register of Wills for the County of Philadelphia, Commonwealth of Pennsylvania.

5. That the defendant, David T. Wilentz, is a citizen of the United States and a resident of the City of

Perth Amboy, Middlesex County, State of New Jersey, and is the duly appointed and qualified Attorney General of the State of New Jersey.

6. That the defendant, J. Thayer Martin, is a citizen of the United States and a resident of Woodbridge, Middlesex County, State of New Jersey, and is the duly appointed and qualified State Tax Commissioner of the State of New Jersey.

7. That the defendant, William H. Albright, is a citizen of the United States and a resident of Woodbury, Gloucester County, State of New Jersey, and is the duly appointed and qualified State Treasurer of the State of New Jersey.

8. On the 25th day of May, 1936, Alpin J. Cameron departed this life at St. Mary's Hospital, Frankford Avenue and Palmer Street, in the City of Philadelphia, Commonwealth of Pennsylvania, to the best of the complainant's knowledge, information and belief a citizen and resident of the Commonwealth of Pennsylvania, having resided at 4206 Chester Avenue, Philadelphia, Commonwealth of Pennsylvania.

9. On the 9th day of June, 1936, the last Will and Testament of Alpin J. Cameron, deceased, was duly probated in the Office of the Register of Wills in and for the County of Philadelphia, Commonwealth of Pennsylvania, and Letters Testamentary

thereon duly granted to Alpin W. Cameron, the complainant, by the Register of Wills of the aforesaid County. A copy of said Letters Testamentary including therein a copy of said Will is annexed hereto and made part hereof and marked Exhibit "A."

10. The said Alpin J. Cameron, deceased, died possessed of certain real and personal property of a value in excess of approximately $1,200,000., more particularly described as follows:

Real Estate in the State of New Jersey, located at Ridgewood, Bergen County	$100,853.00
Real Estate in the State of New Jersey, located at Cape May, Cape May County	7,500.00
Tangible personal property located in the State of New Jersey	3,560.05
Real Estate in the State of Pennsylvania, located in Chester County	8,000.00
Real Estate in the State of Pennsylvania, located in Philadelphia County	31,200.00
Tangible personal property located in the Commonwealth of Pennsylvania	8,996.25
Intangible personal property consisting of stocks, bonds, cash, etc. ...	1,076,283.64
Real Estate located in Muncie, Delaware County, State of Indiana ...	389.11

11. Your complainant has in his possession and custody money and property in an amount and value exceeding $500. to which the taxing authorities of the Commonwealth of Pennsylvania and the State of New Jersey, the respondents herein, claim to be entitled adversely to each other, but also under the applicable statutes of Pennsylvania (Act #258, Laws of 1919, as amended and supplemented through Act #21, Special Session Laws of 1936, and Act #859 of the Laws of 1927, as amended through Act #340, Laws of 1935) and New Jersey (Chapter 228, General Laws of 1909, as amended through and including Chapter 90, Laws of 1935, and Chapter 243 of the Laws of 1934), your complainant is under an obligation under the laws of the Commonwealth of Pennsylvania in such case made and provided and the laws of the State of New Jersey in such case made and provided, to pay, adjust and settle any and all estate, inheritance and succession taxes that may be due the Commonwealth of Pennsylvania and the State of New Jersey, irrespective of any demands made therefor, and the said respondent tax authorities of both states are claiming to be entitled to the benefits of said statutes in such case made and provided on the theory that the said Alpin J. Cameron died a resident of the state for which said respondent authorities are respectively acting.

12. Your complainant is informed and believes and therefore avers that under the provisions of said taxing statutes of each of said states a tax lien is

imposed on all of the property of the said estate of Alpin J. Cameron of which your complainant is Executor until all taxes assessed by said states are paid and that the respondents will claim and are claiming to be entitled to the benefit of such liens.

13. Your Complainant is informed and believes and therefore avers that the respondents, Charles J. Margiotti, Attorney General as aforesaid, and John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Harry V. Dougherty, Register of Wills of the County of Philadelphia as aforesaid, have determined that the said Alpin J. Cameron died domiciled in the City and County of Philadelphia, Commonwealth of Pennsylvania, and are asserting and have threatened and are about to assess and attempt to collect from your complainant and the estate in his charge estate and succession taxes under the provisions of the Statutes of the Commonwealth of Pennsylvania in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $40,000., and that if the said Alpin J. Cameron died a non-resident of and not domiciled in the Commonwealth of Pennsylvania, the estate and succession taxes under the laws of the Commonwealth of Pennsylvania in such case made and provided would be a comparatively small amount.

14. Your complainant is informed and believes and therefore avers that the respondents, David T.

Wilentz, Attorney General of the State of New Jersey, J. Thayer Martin, State Tax Commissioner of the State of New Jersey, and William H. Albright, State Treasurer of the State of New Jersey, have determined that the said Alpin J. Cameron died domiciled in Ridgewood, Bergen County, State of New Jersey, and are asserting and have threatened and are about to assess and attempt to collect from your complainant and the estate in his charge estate and succession taxes under the provisions of the Statutes of the State of New Jersey in such case made and provided based upon said domicile or determination of domicile in an amount of approximately $75,000.00, and that if the said Alpin J. Cameron died a non-resident of and not domiciled in the State of New Jersey, the estate and succession taxes under the laws of the State of New Jersey in such case made and provided would be a comparatively small amount.

15. That it is impossible in law or fact for the said Alpin J. Cameron to have been domiciled at the time of his death in both the Commonwealth of Pennsylvania and the State of New Jersey and it should not be possible for estate, inheritance and succession taxes to be so asserted, threatened, assessed and collected by the taxing officials of said two states.

16. Your complainant is informed, believes and therefore avers that there is little likelihood of any controversy between your complainant, executor as aforesaid, on the one hand, and the respond-

ents, Charles J. Margiotti, Attorney General as aforesaid, John B. Kelly, Secretary of Revenue as aforesaid, of the Commonwealth of Pennsylvania, and Harry V. Dougherty, Register of Wills of the County of Philadelphia as aforesaid, on the other hand, as to Pennsylvania taxes, their computation, assessment and collection, if the question of domicile is finally determined, or of any controversy between your complainant, executor as aforesaid, on the one hand, and the respondents, David T. Wilentz, Attorney General of the State of New Jersey, J. Thayer Martin, State Tax Commissioner of the State of New Jersey, and William H. Albright, State Treasurer of the State of New Jersey, on the other hand, as to New Jersey taxes, their computation, assessment and collection, if the question of domicile is finally determined, but that the main controversy relates to a sum of between approximately $40,000. and approximately $75,000. in the custody and possession of your complainant and to complainant's obligation with respect thereto, which under the said tax laws of the said Commonwealth of Pennsylvania and State of New Jersey in such case made and provided, the taxing authorities of which are respectively claiming adversely to one another.

17. The threatened collection of taxes by both the Commonwealth of Pennsylvania and the State of New Jersey, each based upon an inconsistent claim of domicile, will deprive your complainant and the estate in his charge of property without due process of law

and deny him equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States; the threatened assessment and collection of both said taxes, each based upon an inconsistent claim of domicile, is causing irreparable injury by interfering with the administration of the estate both in the Commonwealth of Pennsylvania and the State of New Jersey causing extra expense and preventing distribution, and will subject your complainant and the estate to interest charges and penalties if not paid at the expiration of one year after the date of the death of the said decedent.

18. Your complainant has no adequate remedy at law and therefore brings this bill in the nature of an interpleader under the provisions of the Federal Interpleader Act, as amended, being Public Act #422 of the 7th Congress, a copy of which is annexed hereto as Exhibit "B".

19. Your complainant has given bond payable to the Clerk of your Honorable Court in such amount and with such surety as this Court has deemed proper conditioned upon compliance by your complainant with a future order or decree of this Court with respect to the subject matter of this controversy.

Wherefore your complainant prays:

(1) That this court enter a temporary restraining order enjoining the respondents and each of them,

their agents and servants, until further order of this court, from taking any action to fix or assess any estate, inheritance or succession tax on transfers caused by the death of the said Alpin J. Cameron and from taking any action to claim any estate, inheritance or succession tax from the Estate of Alpin J. Cameron or Alpin W. Cameron as executor under the Will of Alpin J. Cameron, deceased.

(2) That this court determine the domicile of the said Alpin J. Cameron at the time of his death and thereupon enter a permanent order enjoining those respondents who are officials of the non-domiciliary state, their agents and servants, from taking any action to collect any estate, inheritance or succession tax based upon any domicile except as so determined by your Honorable Court.

(3) That each of the respondents be required to set forth and plead their several adverse claims to said money and property in the custody and possession of your complainant and to any one or more of the benefits arising by virtue of the complainant's obligation to pay estate, inheritance or succession taxes on account of the death of the said Alpin J. Cameron.

(4) That this court determine the person or persons entitled to said money and property and to any benefit arising by virtue of complainant's said obligation to pay said taxes.

(5) That this court determine the amount owed to any one or more of the respondents by your complainant.

(6) That this court adjudge that your complainant is under no further obligation to any one or more of the respondents upon compliance by your complainant with such decree as this court may make in the premises.

(7) That your complainant be awarded its costs, including a reasonable attorneys' fee to be deducted from any amount which may be decreed due to respondents or any of them.

(8) That this court order such other and further relief as is proper under the circumstances.

(Signed) ALPIN W. CAMERON,
Executor under the Will of Alpin J. Cameron, deceased.

COMMONWEALTH OF PENNSYLVANIA }
CITY & COUNTY OF PHILADELPHIA } *ss:*

ALPIN W. CAMERON, being duly sworn according to law, deposes and says that he is Executor under the Will of Alpin J. Cameron, deceased, and that the facts set forth in the foregoing Bill are true and correct to the best of his knowledge, information and belief.

Sworn to and Subscribed before me this 17th day of February, 1937.

(Sgd.) M. A. HIRSCHFELD,
Notary Public.

[SEAL]

My Commission expires April 1st, 1937.

EXHIBIT "A."

No. 9783

COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA, }

LETTERS TESTAMENTARY

By the tenor of these presents, I, Harry V. Dougherty, Register for the Probate of Wills and Granting Letters of Administration in and for the County of Philadelphia, in the Commonwealth of Pennsylvania.

DO MAKE KNOWN TO ALL MEN That on the 9th day of June A. D. 1936, at Philadelphia, before me, was proved and approved the last Will and Testament of Alpin J. Cameron deceased (a true copy whereof is to these presents annexed), having whilst he lived at the time of his death, divers Goods, Chattels, Rights and Credits, within the said Commonwealth; by reason whereof the approbation and insinuation of said last Will and Testament, and the committing administration of all and singular the Goods, Chattels, Rights and Credits, which were of the said deceased; and also the auditing the accounts, calculations and reckonings of the said administration and absolute care of the same, to me are manifestly known to belong; and that administration of all and singular the Goods, Chattels, Rights and Credits of said deceased any way concerning his last Will and Testament, is committed to Alpin W. Cameron Executor in the said Testament named; he having first been duly sworn well and truly to administer the Goods, Chattels, Rights and Credits

of the deceased, and make a true and perfect inventory thereof and exhibit the same into the Register's Office of Philadelphia, within thirty days from the date hereof, and to render a just and true account, calculation and reckoning of the said administration at the expiration of six months from the date hereof, or when thereunto required by the Orphans' Court; and also diligently and faithfully to regard and well and truly comply with the provisions of the acts relating to Inheritance Taxes.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office, at Philadelphia, this 9th day of June, in the year of our Lord one thousand nine hundred and Thirty-six.

The said testator died on the 25th day of May 1936, at 3.12 o'clock A. M., as per affidavit filed.

ROBERT T. IVES
Deputy Register.

[SEAL]

Fees for Letters Testamentary,	$61.00
" " Certificate	5.00
" " Filing Renunciation, ..	———
Paid	$66.00

BE IT REMEMBERED that I, ALPIN J. CAMERON, of the Town of Ridgewood, County of Bergen, State of New Jersey, being of sound and disposing mind, memory and understanding, make, publish and declare this to be my last Will and Testament, hereby revoking all other and former wills by me at any time heretofore made.

FIRST. I direct that all my just debts and funeral expenses shall be paid by my Executor as soon after my decease as may be convenient.

SECOND. All my ordinary house furnishings on my Wawaset Farm, Chester County, Pennsylvania, and in my Philadelphia house 4206 Chester Avenue, and my antique furniture, books, paintings and works of art I give and bequeath unto my son, Alpin W. Cameron.

THIRD. I give and bequeath the sum of Fifteen Hundred Dollars ($1,500) unto the Girard Trust Company to hold and invest the same and keep the same safely invested and use and apply the income therefrom in and about the perpetual care and maintenance of my cemetery lots in St. Luke's Churchyard, Ho-Ho-Kus, New Jersey.

FOURTH. All of the stock in the Girard Trust Company owned by me at the time of my death, I give and bequeath unto my Trustees to hold the same and pay over the income therefrom unto my son Alpin W. Cameron for life, free and clear of his debts, contracts, engagements, alienations and anticipations, so that the same shall not be liable to any levy, attachment, execution or sequestration. In Trust upon his death to assign, transfer, pay over and divide the same to and among his wife and descendants living at the time of his death, share and share alike, *per stirpes* upon the principle of representation, his said wife to take a child's share, or should my said son die without leaving either

wife or descendants him surviving, to assign, transfer and pay over the same in such way and manner as my said son may by his last Will and Testament direct, limit and appoint.

FIFTH. I direct that my Executor select and set aside securities of a par value of Sixty Thousand Dollars ($60,000) and the securities thus selected I give and bequeath unto my Trustees hereinafter named IN TRUST to hold and invest the same, keep the same safely invested and pay over out of the income therefrom the sum of Fifty Dollars ($50.00) per month, beginning at the expiration of one month after my death, for life, to each of my nieces, Caroline Graydon, Jessie Wilson, Agnes Maxwell, Alice Maxwell and Kathleen C. Maxwell, who may be living at each time of monthly distribution. Any income from the said fund not required for this purpose shall be periodically paid over to my son Alpin W. Cameron for life.

IN TRUST upon the death of the last survivor of my said five nieces, to assign, transfer and pay over the corpus or principal of the said fund to my said son Alpin W. Cameron, should he be then living, or should he be then dead in such way and manner and to such persons and for such uses and estates as he may by his last Will and Testament direct, limit and appoint.

SIXTH. I direct that my Executor select and set aside securities of a par value of Thirty Thousand Dollars ($30,000) and the securities thus selected I give and bequeath unto my Trustees hereinafter

named IN TRUST to hold and invest the same, keep the same safely invested and pay over out of the income therefrom the sum of Twenty Dollars ($20.00) a week, beginning at the expiration of one week after my death, for life, unto Margaret Newell. Any income from the said fund not required for this purpose shall be paid over periodically unto my son Alpin W. Cameron for life. IN TRUST upon the death of the said Margaret Newell, to assign, transfer, pay over and divide the principal of the said fund of Thirty Thousand Dollars ($30,000) to and among any children who may survive her in such shares and proportions as the said Margaret Newell may by her last Will and Testament direct, limit and appoint. IN TRUST as to the balance of the said fund or the whole thereof should there be no children surviving the said Margaret Newell, to assign, transfer and pay over the same unto my said son Alpin W. Cameron, should he be then living, or should he be then dead in such way and manner and to such persons and for such uses and estates as he may by his last Will and Testament, direct, limit and appoint.

SEVENTH. I direct that all the foregoing gifts, bequests and life interests shall be paid free and clear of all succession, inheritance or estate taxes, which taxes I direct to be paid out of the principal of my residuary estate.

EIGHTH. All the rest, residue and remainder of my estate, of whatever nature and wheresoever situated, real, personal and mixed, I give, devise and bequeath unto my son Alpin W. Cameron absolutely.

NINTH. I hereby name, constitute and appoint my son Alpin W. Cameron, Executor of this my last Will and Testament, and my son Alpin W. Cameron and Girard Trust Company, Trustees under this my last Will and Testament.

My said Executor, for the purpose of administering my estate and the payment of my debts, and thereafter my said Trustees for the purpose of the administration of the same and the ultimate distribution thereof in accordance with the terms of this my last Will, shall, in addition to and not in limitation of any authority given them by law, have the right and authority to exercise any of the following powers, viz:

1. To sell any real estate which may at any time form part of my estate for such prices, upon such terms, in such way and manner, and for such interests and estates as may be deemed wise, and to make good deeds therefor to the purchaser or purchasers thereof without any obligation on the latter to see to or be responsible for the application of the purchase money.

2. To retain in their discretion, without liability, any of my investments in the form in which they may be at the time of my decease.

3. To invest and reinvest, alter, vary and change investments and reinvestments from time to time, at discretion, not being confined to what are known as "Legal Investments" any statute to the contrary notwithstanding.

4. To purchase investments at a premium and to charge the premium over to principal or income, or partly to principal and partly to income, as they shall deem best.

5. To sell any securities or other personal property which may at any time form part of my estate for such prices, upon such terms, in such way and manner and for such interests and estates as may be deemed wise, and to make good transfers and assignments therefor to the purchaser or purchasers thereof without any obligation on the latter to see to or be responsible for the application of the purchase money.

In Witness Whereof I have hereunto set my hand and seal this 6th day of June A. D. 1935.

ALPIN J. CAMERON [SEAL]

SIGNED, SEALED, PUBLISHED AND DECLARED by the above named ALPIN J. CAMERON as and for his last Will and Testament, in the presence of us who at his request, in his presence and in the presence of each other, all present at the same time, have hereunto subscribed our names as witnesses.

STANLEY S. HAZZARD
47 No. Maple Ave., Ridgewood, N. J.
HENRY E. SCHMULTS
216 Elmwood Ave., Hoboken, N. J.
WILLIAM V. C. WESTERCRET
35 Garfield Place, Ridgewood, N. J.

EXHIBIT "B."

[PUBLIC—No. 422—74TH CONGRESS] [S. 1277]

AN ACT To amend section 24 of the Judicial Code by conferring on district courts additional jurisdiction of bills of interpleader, and of bills in the nature of interpleader.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 24 of the Judicial Code, as amended, is amended by inserting at the end thereof the following:

"(26) Original jurisdiction of bills of interpleader, and of bills in the nature of interpleader—Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly verified, filed by any person, firm, corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of the value or amount of $500 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if—

"(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

"(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; or (b) has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the complainant with the future order or decree of the court with respect to the subject matter of the controversy.

Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

"(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

"(c) Notwithstanding any provision of the Judicial Code to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the

respective districts wherein said claimants reside or may be found.

"(d) Said court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same.

"(e) In any action at law in a United States District Court against any person, firm, corporation, association, or society, such defendant may set up by way of equitable defense, in accordance with section 274b of the Judicial Code (U. S. C., title 28, sec. 398), any matter which would entitle such person, firm, corporation, association, or society to file an original or ancillary bill of interpleader or bill in the nature of interpleader in the same court or in any other United States District Court against the plaintiff in such action at law and one or more other adverse claimants, under the provisions of paragraph (a) of this subsection or any other provision of the Judicial Code and the rules of court made pursuant thereto. The defendant may join as parties to such equitable defense any claimant or claimants who are not already parties to such action at law. The district court in which such equitable defense is interposed shall thereby possess the powers conferred upon district courts by paragraphs (c) and (d) of this subsection and by section 274b of the Judicial Code."

SEC. 2. The Act entitled "An Act authorizing casualty companies, surety companies, insurance companies or associations or fraternal or beneficial societies to file bills of interpleader," approved May 8, 1926 (U. S. C., Supp. III, title 28, sec. 41 (26)), is hereby repealed. Said repeal shall not affect any act done or any right, accruing or accrued in any suit or proceeding had or commenced under said Act hereby repealed, prior to the passage of this Act, but all such acts or rights, suits or proceedings shall continue and be valid and may be prosecuted and enforced in the same manner as if said Act had not been repealed hereby.

Approved, January 20, 1936.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [redacted] 34

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

vs.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

BRIEF OF AMICUS CURIAE.

CASPER SCHENK,
Amicus Curiae.

I. H. VAN WINKLE, Attorney-General of the State of Oregon,
and,
DEAN H. DICKINSON,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 922.

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,

vs.

RAY L. RILEY, Controller of the State of California, ET AL.,
Respondents.

BRIEF OF AMICUS CURIAE.

The undersigned, a member of the Bar of this Court, as Amicus Curiae, respectfully requests permission to submit the following Brief.

Preliminary Statement.

We ask to be heard because we are interested in another pending case, involving similar questions. *Northern Securities Co. et al. v. U. S.*, 191 U. S. 555, 556. Refus C. Holman, Treasurer of the State of Oregon, has been summoned to appear in the United States District Court for the Northern District of Iowa, Cedar Rapids Division, in a suit brought by Hadassah Thompson Boyer, an Oregon executrix, and other beneficiaries of the Estate of one Mary Martha Reed, deceased, to contest with the Treasurer of the State of Iowa the right to collect a State inheritance tax against that estate. Complainants' bill is patterned after the one at bar.

Decedent was admittedly domiciled in Portland, Oregon, at the time of her decease, but she held in safety deposit boxes at Cedar Rapids, Iowa, certain stocks, bonds, and mortgages claimed by the taxing officers of Iowa to have acquired a business situs in the latter state. Complainants seek to interplead the treasurers of the two states, under the Federal Interpleader Act. The undersigned represent Respondent Holman, as counsel.

A copy of Section 10-633 of the Oregon Code, 1930, providing for the assessment and collection of inheritance taxes in the name, and for the benefit of, that state is hereto attached marked Appendix A.

This brief is filed with the consent of the attorneys for Respondents herein.

General Proposition.

We respectfully submit that, under the Federal Interpleader Act and the Constitution of the United States, the Federal Courts are without jurisdiction to interplead inheritance tax officials of different states.

If it is admitted that a state inheritance tax official is acting in legal conformity with constitutional statutes of his state, then the taxpayer is not denied due process, and a suit against the official is, in fact, a suit against the state, and, without its consent, contravenes the Eleventh Amendment. If the tax official's alleged claims are in violation of law, they cannot be regarded as adverse to, or preclude the claims of other states. In the absence of adverse claims, the Federal Interpleader Act is inapplicable. Where adverse claims are held by sovereign states, they cannot be interpleaded without the states' consent.

In either event, the Federal District Courts are without jurisdiction.

Points and Authorities.

1. Neither the language nor the history of the Federal Interpleader Act reveal any legislative intention to reach such suits as are involved in this case.

Judicial Code, Section 24 (26), as amended, 28 U. S. C. A. Section 41 (26).

Report of the Committee on the Judiciary submitted with the Bill, 74th Congress, First Session, Senate Report No. 558, April 15, 1935, to accompany S. 1277.

House Report, Page 2, No. 1437, 74th Congress, First Session, July 8, 1935.

2. To invoke the enlarged jurisdiction granted to the United States District Courts by the Federal Interpleader Act, Complainants must present a bill which not only contains the averments required by the statute, but it must also be sufficient under the principles of equity. The convenience of individuals cannot prevail over the convenience of sovereign states. Considerations of individual convenience cannot supplant the Supreme Law of the land.

Missouri v. Fiske, 290 U. S. 18, 25-26.
Ex Parte Ayers, 123 U. S. 443, 485, 505-506.
Williams v. U. S. 289 U. S. 553, 576.
Monaco v. Mississippi, 292 U. S. 313, 322.
Klaber v. Maryland Casualty Co., (C. C. A. 8) 69 F. (2d) 934, 937, 939.

3. The collection of taxes under state authority will not be enjoined by the Federal courts merely because the taxes appear to be illegal or unconstitutional. It must further appear that the party taxed has no adequate remedy by the ordinary processes of the law. And the bill must show there are special circumstances bringing the case within some recognized head of equity jurisdiction.

Arkansas Building & Loan Ass'n v. Madden, 175 U. S. 269, 272.
Boise Artesian etc. Water Co. v. Boise City, 213 U. S. 276, 282.

Pittsburg etc. Railway v. Board of Public Works, 172 U. S. 32, 37.
Shelton v. Platt, 139 U. S. 591, 600.
Stratton v. St. Louis Southwestern R. Co., 282 U. S. 10, 15.

4. Complainant's bill in the instant case seeks relief in contravention of the Eleventh Amendment of the Constitution and beyond the jurisdiction of the Federal Courts.

Ex Parte State of New York, No. 1, 256 U. S. 490, 500.
Cunningham v. Macon & Brunswick R. R. Co., 109 U. S. 446, 456.
Ex Parte Ayers, 123 U. S. 443, 485.
Fitts v. McGhee, 172 U. S. 516, 529.
Hagood v. Southern et al., 117 U. S. 52.
Missouri Pacific R. Co. v. Norwood, Attorney-General of Arkansas, 283 U. S. 249, 254.

5. The allegation of a bill that complainant is threatened with collection of inheritance taxes in two states depriving complainant of due process and equal protection under the Fourteenth Amendment is a barren, unadmitted conclusion as to a merely fanciful issue.

Missouri Pacific R. Co. v. Norwood, Attorney-General of Arkansas, 283 U. S. 249, 254.
Pacific States Box Co. v. White, 296 U. S. 176, 185.
Aetna Insurance Co. v. Hyde, 275 U. S. 440, 447.

6. The Fourteenth Amendment does not guarantee judicial infallibility, and the mere possibility of conflicting decisions by state courts does not indicate failure of due process of law.

Milwaukee Elec. etc. Ry. & Light Co. v. Wisconsin, 252 U. S. 100, 106.
Central Land Co. v. Laidley, 159 U. S. 103.
Tracy v. Ginzberg, 205 U. S. 170.
Thormann v. Frame, 176 U. S. 350, 356.
Overby v. Gordon, 177 U. S. 214, 227.
Baker v. Baker Eccles. & Co., 242 U. S. 394, 403.

7. Where state taxes are concerned, due process under the Fourteenth Amendment is fully satisfied if, at some stage in the proceedings, the taxpayer has notice and opportunity to be heard.

Mt. St. Mary's Cemetery Ass'n. v. Mullins, 248 U. S. 501, 506.
Soliah v. Heskin, 222 U. S. 522, 524.
New York v. State Board of Tax Comm'rs, 199 U. S. 48, 52.
Hodge v. Muscatine County, 196 U. S. 276, 281.
Hibben v. Smith, 191 U. S. 310, 322.

We respectfully submit that, upon the face of such a record, a District Court is without jurisdiction. The majority opinion of the learned Circuit Court of Appeals, First Circuit, succinctly states the reasons why the Federal Interpleader Act, as amended, is clearly inapplicable to this class of cases. This Court, in the exercise of a sound, judicial discretion, we confidently submit, should promptly set this question at rest by refusing to review that decision.

Respectfully submitted,

CASPER SCHENK,
Amicus Curiae.

I. H. VAN WINKLE,
Attorney-General of the State of Oregon, and,
DEAN H. DICKINSON,
Of Counsel.

APPENDIX A.

INHERITANCE TAX LAWS OF OREGON

Effective June 12, 1935.

§ *10-633 O. C. 1930. Tax due and unpaid—Duty of treasurer.* If the state treasurer shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the prosecuting attorney of the county in writing of such failure or neglect, and such prosecuting attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the county court for a citation citing the persons liable to pay such tax to appear before the court on the day specified, not more than thirty days from the date of such citation, unless the court, for good cause shown, grants a longer time, and show cause why the tax should not be paid. The county court, upon such application, and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and a service of such citation, and the time, manner, and proof thereof, and the hearing and determination thereon, shall conform as near as may be to the provisions of the probate practice; provided, that where no provision is made for manner of such service or proof of same, the court or judge, at the time such order or citation is issued, shall direct the manner of giving notice and proof of the same; and whenever it shall appear that any such tax is due and payable and the payment thereof can not be enforced under the provisions of this act in said county court, the person or corporation from whom the same is due is hereby made *liable to the state* for the amount of such tax, and it shall be the duty of the prosecuting attorney of the proper county to *sue for, in the name of the state,* and enforce the collection of such tax; and all taxes so collected shall be forthwith paid into the inheritance tax fund of the state. It shall be the duty of said prosecuting attorney to appear for and represent the state treasurer on the hearing of such citation, or of any other hearing. Whenever the county judge shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section,

the state treasurer shall file with the secretary of state a duly verified itemized account of all expenses incurred for the service of the citation, and other lawful disbursements not otherwise paid, and the secretary of state shall thereupon draw his warrant upon the state treasurer for the payment thereof, and in favor of said treasurer, payable from the inheritance tax fund.

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Supreme Court of the United States

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY,
Executor,
Petitioner,

v.

RAY L. RILEY, Controller of the State of California,
et al.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MOTION OF THE STATE OF NEW YORK FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

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BATAVIA, N. Y.

Supreme Court of the United States

OCTOBER TERM, 1937

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May It Please the Court:

The undersigned, as Attorney-General of the State of New York, and also in behalf of Hon. Mark Graves, Commissioner of Taxation and Finance, and Hons. John J. Merrill and John P. Hennessey, State Tax Commissioners of the State of New York, respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

JOHN J. BENNETT, JR.,
Attorney-General of the State of New York,
The Capitol, Albany, N. Y.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 34

WORCESTER COUNTY TRUST COMPANY, Executor,
Petitioner,
v.
RAY L. RILEY, Controller of the State of California, *et al.*

BRIEF OF THE STATE OF NEW YORK AMICUS CURIAE.

Statement of Position.

This case appears to present the questions whether the "Federal Interpleader Act" [Judicial Code, §24 (26); 28 U. S. C. §41 (26)], as amended by the Act of January 20, 1936 (49 Stat. 1096) is to be interpreted as granting to the United States District Courts jurisdiction to determine which of two or more States has authority to impose an inheritance tax measured by the value of a decedent's intangible assets transferred by his death and whether, if so interpreted, the Act would not violate the Eleventh Amendment of the Constitution of the United States.

The State of New York, represented by its Department of Taxation and Finance and its Attorney-General, respectfully urges that the Interpleader Act is not to be so interpreted and that, if so interpreted, it would deny to the States their inherent immunity from suit at the hands of a private citizen, preserved, as to citizens of another State, by the Eleventh Amendment of the United States Constitution.

ARGUMENT.

The legal and constitutional questions involved have been thoroughly considered in the very able and convincing opinion of the Circuit Court of Appeals and, we are sure, will be exhaustively presented in the briefs and arguments of the parties to the appeal. This memorandum, therefore, will be limited to a very brief outline of the reasons why the State of New York believes that the judgment of the Circuit Court of Appeals should be affirmed.

1. The States of the Union are, by the language of the Interpleader Act, excluded from its operation. Jurisdiction is conferred by the Act only in case there are two or more adverse claimants who are "citizens of different States" and, of course, a State is not a citizen of any State.

Minnesota v. Northern Securities Co., 194 U. S. 48, 63.

2. If the Act had attempted to include States within its operation, it would, to that extent, have been invalid under Art. 3, §2 of the Constitution, conferring on this Honorable Court original jurisdiction in all

cases in which a State is a party, and under the Eleventh Amendment, which excepts from the judicial power of the United States suits in law or equity against a State by citizens of another State.

Ex Parte State of New York, No. 1, 256 U. S. 490, 497,

Monaco v. Mississippi, 292 U. S. 313.

3. The States claiming the right to impose inheritance taxes are the real parties in interest in any controversy involving their power to do so, and that is equally true where the action or suit in which the controversy is involved is brought against the State's officers or other representatives as where it is brought against the State itself.

Ex Parte State of New York, No. 1, supra, p. 500.

4. None of the exceptions to the foregoing rule are present in the instant case. It is neither alleged nor contended that the statute of either State is unconstitutional or that the representatives of either State have acted or are threatening to act arbitrarily or in excess of their statutory powers.

Ex Parte State of New York, No. 1, supra, pp. 500-502.

5. The Courts of the several States are competent to determine for themselves the question of the domicile of a decedent, and an incorrect decision of that question resulting in the imposition of inheritance taxes on intangibles by more than one State does not constitute a violation of either the due process or equal protection clauses of the Constitution.

Overby v. Gordon, 177 U. S. 214, 227,
Tilt v. Kelsey, 207 U. S. 43, 51, 53,
Baker v. Baker, Eccles & Co., 242 U. S. 394, 401, 403-404,
Dorrance v. Martin, 298 U. S. 678.

6. If, without allegation or proof, it be assumed that the representatives of one or the other of the States are acting arbitrarily or in excess of their authority, the representatives of the other State admittedly are not so acting, and the suit clearly is to be deemed one against that State.

7. As the estate in the present instance is more than sufficient to pay the tax claims of both States, even if the courts of both States should determine that the decedent was domiciled within its borders, and there is hence no controversy between the States, this Honorable Court would not feel that it had jurisdiction to determine the question of domicile in an original action to which the States were themselves parties.

Texas v. New York, 300 U. S. 642.

It is not to be assumed that there was an intention on the part of Congress to confer upon the district courts, in suits to which only the officers of the States are parties, greater jurisdiction than is possessed by this Honorable Court in actions to which the States themselves are parties.

8. Congress by the recent amendment of section 24 of the Judicial Code (Act of August 21, 1937; Public No. 332—75th Congress) has indicated very

definitely that suits of this nature were not intended to be included within the scope of the Interpleader Act. By that amendment, there was inserted in the section the following provision:

> "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

While the amendment does not affect pending suits (§2), it does disclose a policy that neither the States nor their officers should be enjoined by the district court, *in any form of suit,* from enforcing their tax claims, except in those cases where the taxpayer should be without a full and speedy remedy in the courts of the State.

In the light of this policy, it seems wholly unreasonable to suppose that Congress, no longer ago than last year, by the enactment of a general interpleader act, intended to bestow upon the district courts jurisdiction which they did not theretofore possess to enjoin a State or its officers from enforcing tax claims of the State.

9. The inclusion of the officers of the States within the terms of the Interpleader Act in cases such as this would impose upon the States' taxing authorities the tremendous burden of either defending suits throughout the entire United States or foregoing their legiti-

mate tax claims, a result which clearly was not intended by Congress, as is evidenced by the recent amendment of the Judicial Code to which reference has already been made.

For these reasons and others contained in the opinion of the learned Court below, we think that the judgment under review should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1937.
No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,

Petitioner,

vs.

RAY L. RILEY, Controller of the State of California, et al.,

Respondents.

On Certiorari to the United States Circuit Court of Appeals for the First Circuit

BRIEF AS *AMICI CURIAE* OF THE STATES OF NEW JERSEY, ARKANSAS, NORTH CAROLINA, COLORADO, FLORIDA, IDAHO

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Supreme Court of the United States

OCTOBER TERM, 1937.

No. 34.

WORCESTER COUNTY TRUST COMPANY, Executor,

Petitioner,

vs.

RAY L. RILEY, Controller of the State of California; W. H. H. GENTRY, Inheritance Tax Attorney of the State of California; FRANK P. SPROUL, Inheritance Tax Appraiser of the State of California; and HENRY L. LONG, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts,

Respondents.

On Certiorari to the United States Circuit Court of Appeals for the First Circuit

---

BRIEF AS *AMICI CURIAE* OF THE STATES OF NEW JERSEY, ARKANSAS, NORTH CAROLINA, COLORADO, FLORIDA, IDAHO

THE OPINIONS OF THE COURTS BELOW

The opinion of the District Court for the District of Massachusetts (Brewster, D. J.) (R. 26) is reported in 14 F. Supp. 754. The opinions of the Circuit Court of Appeals for the First Circuit (Bingham and Wilson, JJ.; Morton, J., dissenting) (R. 43, 57) are reported in 89 F. (2d) 59, 68. The order granting *certiorari* and admitting Henry L. Long, Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, as a party respondent (R. 61) is reported in 301 U. S. —. The order denying *certiorari* before final decree of the Circuit Court of Appeals is reported in 299 U. S. 567.

STATEMENT

The purpose of petitioner's bill, in the nature of a bill of interpleader and allegedly filed pursuant to the provisions of section 24 (26) of the Judicial Code (28 U. S. C., sec. 41 (26)) as amended (Act of Cong. January 20, 1936, c. 13, sec. 1, 49 Stat. 1096), is to determine the legal domicile of petitioner's testator and the amount of domiciliary taxes for which his estate is liable, and to obtain permanent injunction against such of respondents as represent the non-domiciliary State, restraining them from taking any action to collect inheritance taxes based on testator's domicile therein.

The facts of the case are sufficiently stated in the briefs of the principal parties and need not be reiterated here.

The States of New Jersey, Arkansas, North Carolina, Colorado, Florida and Idaho, are vitally interested in the outcome of this litigation because of the pendency of similar

suits in which they are involved,[1] or because of the presence of proceedings pending before their taxing officials in which domicile is an issue.

ARGUMENT

Summary of Argument:

1. Postulates accepted by the parties and the courts below.
2. Because of the inherent nature of an interpleader suit, at least one State must become a party respondent.
3. A State is not a citizen within the meaning of the diversity of citizenship clause of the Interpleader Act.
4. The Eleventh Amendment precludes the interpleading of individuals against a sovereign State.
5. This case is not controlled by *City Bank Farmers' Trust Co.* vs. *Schnader.*
6. The Interpleader Act, as amended, was never intended to apply to a suit of the nature of the one *sub judice.*

---

[1] *Alpin J. Cameron, Executor, etc., Complainant, vs. Charles J. Margiotti, individually and as Attorney-General of the Commonwealth of Pennsylvania, et al., and David T. Wilentz, individually and as Attorney-General of the State of New Jersey, et al., Respondents,* (December Term, 1936, No. 9639) now pending in the United States District Court for the Eastern District of Pennsylvania; the purpose of which is to determine the State entitled to collect resident inheritance taxes.

POINT I

POSTULATES ACCEPTED BY THE PARTIES AND THE COURTS BELOW

In the prosecution of this suit, it appears that the following postulates, deeply rooted in the issues presented, have been accepted by the parties and the courts below alike:

(a) That a State, because of the Eleventh Amendment, is not subject to suit in the federal courts by a citizen of another State, or one of its own citizens, without its consent.

Missouri vs. *Fiske,* 290 U. S. 18, 25, 26.
Ex Parte State of New York, No. 1, 256 U. S. 490, 497.
Monaco vs. *Mississippi,* 292 U. S. 313, 329, 330.

(b) That a suit against officers and agents of a State acting *wrongfully,* i. e., in an *authorized* manner under an *invalid* statute,

Terrace vs. *Thompson,* 263 U. S. 197, 214;
Public Service Co. vs. *Corboy,* 250 U. S. 153, 159;
Cavanaugh vs. *Looney,* 248 U. S. 453, 456;
Ex Parte Young, 209 U. S. 123, 149-160;
Smyth vs. *Ames,* 169 U. S. 466, 518, 519;

or, in an *unauthorized* manner under a *valid* statute,

Sterling vs. *Constantin*, 287 U. S. 378, 393;
Greene vs. *Louisville & Interurban R. Co.*, 244 U. S. 499, 507;
Reagan vs. *Farmers Loan & Trust Co.*, 154 U. S. 362, 390;

is not a suit against the State.

(c) That a suit against officers and agents of a State acting *rightfully*, i. e., pursuant to authority conferred by a *valid* statute, is a suit against the State.

In re Ayers, 123 U. S. 443, 505-507.
Ex Parte State of New York, No. 1, 256 U. S. 490, 500.

(d) Whether a suit is, in fact, against a State is not to be determined by the mere names of the titular parties, but by the essential nature and effect of the proceeding as they appear from the entire record.

Ex Parte State of New York, No. 1, 256 U. S. 490, 500.
Hopkins vs. *Clemson College*, 221 U. S. 636, 642.

(e) A State is not a citizen.

City Bank Farmers' Trust Co. vs. *Schnader*, 291 U. S. 24, 29.
State Highway Commission vs. *Utah Construction Co.*, 278 U. S. 194, 199, 200.

And the bill appears to be based upon the premise that the group of taxing officials representing the State of California, *or* the taxing official representing the State of Massachusetts, is acting rightfully, and that the State

which it or he represents has a valid claim to all or some portion of the fund interpleaded for domiciliary inheritance taxes.

The District Court upheld jurisdiction, applying postulate (b), while the Circuit Court denied jurisdiction, applying postulates (a), (c), (d) and (e).

POINT II

BECAUSE OF THE INHERENT NATURE OF AN INTERPLEADER SUIT, AT LEAST ONE STATE MUST BECOME A PARTY RESPONDENT

As observed in the dissenting opinion of Judge Morton (R. 57, 58):

> "* * * It is characteristic of bills in the nature of interpleader under this statute, that the plaintiff concedes indebtedness to one or the other of the claimants, but denies indebtedness or obligation to each one separately."

And, again, that it (R. 58):

> "* * * is inherent in suits in the nature of interpleader, that one claimant is adjudged to have a good claim against the plaintiff, and the other not. * * *"

Because this is so, does not the solution of the issue here involved lie in the answer to the simple *quaere,* Is it possible to bring a suit of this nature to a final conclusion without deciding that one group of officials is acting rightfully? If the answer be—and it would seem to be inevitable—that the suit may not be finally concluded without reaching such a determination, then it must necessarily

follow that it cannot be maintained in face of the Eleventh Amendment, because the instant it is determined that one group does not have a good claim against the plaintiff and, therefore, is acting wrongfully, and that the other group does have a good claim against the plaintiff and is, therefore, acting rightfully, it is made clear that individuals are being impleaded against a State.

Even the rule that jurisdiction is to be determined by the allegations of the bill and "not by the way the facts turned out or by a decision on the merits" (*Mosher* vs. *Phoenix*, 287 U. S. 29, 30), would not appear to change the answer, since it is clear from the bill, *and it is also as clear from the start of the suit as it would be at the end*, that at least one of the two groups of State officials must be held to have acted rightfully and, therefore, that the State which it represents must finally be drawn into the litigation if an effective disposition thereof is to be had.

The District Court, in reaching the conclusion that it had jurisdiction, recognized that it could not adjudicate beyond a determination of the legal domicile of the testator at the time of his death. Judge Brewster, in his opinion, says that (R. 37):

> "• • • I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. • • •"

And Judge Morton, in his dissenting opinion, observes that (R. 58):

> "• • • As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; • • •"

These would seem to be unqualified admissions that a State must ultimately come into the suit, and that when it does, the court may act no further.

POINT III

A STATE IS NOT A CITIZEN WITHIN THE MEANING OF THE DIVERSITY OF CITIZENSHIP CLAUSE OF THE INTERPLEADER ACT

Diversity of citizenship between the *claimants* is an indispensable prerequisite to the maintenance of a suit under this section of the Code.

Eagle, Star & British Dominions vs. *Tadlock*, 14 F. Supp. 933, 938-940.

Section 24 (26) of the Judicial Code, as amended (U. S. C. Title 28, sec. 41 (26)) provides that:

> "The district courts shall have original jurisdiction as follows:
>
> • • •
>
> "(26) ORIGINAL JURISDICTION OF BILLS OF INTERPLEADER, AND OF BILLS IN THE NATURE OF INTERPLEADER —Twenty-sixth.—(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader • • • if—
>
> "(i) Two or more adverse claimants, *citizens of different States*,[1] are claiming to be entitled to such money or property • • • ;"

[1] All emphasis herein is by *amici curiae*.

As hereinbefore pointed out, a State is not a citizen *and even its consent to suit does not make it such.*

> *State Highway Commission* vs. *Utah Construction Co.*, 278 U. S. 194, 199, 200.
> *Minnesota* vs. *Northern Securities Co.*, 194 U. S. 48, 62-63.
> *Postal Telegraph Cable Co.* vs. *Alabama*, 155 U. S. 482, 487.

As ruled by this court in *State Highway Commission* vs. *Utah Construction Co., supra* (pp. 199, 200):

> "* * * No consent by the State to submit itself to suit could affect the question of diverse citizenship."

This rule follows the familiar principle that jurisdiction can never be conferred upon a federal court by consent of the parties.

> *Minnesota* vs. *Northern Securities Co.*, 194 U. S. 48, 62.
> *United States* vs. *Corrick*, 298 U. S. 435, 440.

The action, therefore, of the Commissioner of Taxation of the State of Massachusetts in filing a general appearance and answer[2] to the bill (R. 20-22), amounting, possibly, to consent of the State to be sued, does not fulfill the jurisdictional requirement of diversity of citizenship between the claimants.

Since this is a statutory proceeding, even the presence of a substantial federal question could not alter the situation, because the act does not confer jurisdiction upon the

[2] A situation, incidentally, which is not present in *Cameron* vs. *Margiotti, et al.*, (see ibid. p. 3) where the taxing officials of both States appeared specially and filed motions to dismiss for lack of jurisdiction.

District Court where there is diversity of citizenship, *or*, where a federal question is involved. A federal question, under the statute, is not essential, and the presence of such a question cannot, therefore, cure the defect arising from the absence of diversity of citizenship between the claimants.

It is not to be understood from what has just been said that there is, in fact, a federal question present. As observed by the Circuit Court (R. 52), the bill does not allege action by either group of officials under an unconstitutional statute, or the application in an unconstitutional manner of a constitutional statute. There is no claim that the laws of California or Massachusetts are invalid, or that either or both of the groups has arbitrarily, and without evidence, determined that the testator's domicile was within their respective States.

POINT IV

THE ELEVENTH AMENDMENT PRECLUDES THE INTERPLEADING OF INDIVIDUALS AGAINST A SOVEREIGN STATE

Assuming (without, of course, conceding) that the Interpleader Act is sufficiently broad to cover a suit of the nature of the instant one, then the act is unconstitutional because it authorizes a suit against a State by a citizen or citizens of another State in violation of the Eleventh Amendment. As hereinbefore urged, it is inevitable that a State must be drawn into this litigation at some stage. The absence, as pointed out by the Circuit Court, of allegations of unconstitutionality of statutes or arbitrary actions by the State officers under constitutional statutes precludes any claim that respondents are acting wrongfully and, therefore, are acting for themselves and not for the States which they represent.

It would seem certain that petitioner's suit is caught between the fundamental principles governing equitable interpleader, which likewise control statutory interpleader,

> *Eagle, Star & British Dominions* vs. *Tadlock*, 14 F. Supp. 933, 935;
> *Klaber* vs. *Maryland Casualty Co.*, 69 F. (2d) 934, 939;

and the provisions of Article III, sec. 2 of the Constitution of the United States, the Eleventh Amendment thereof, and section 233 of the Judicial Code (U. S. C. Title 28, sec. 341). If the bill, in an attempt to avoid the mandate of the Eleventh Amendment; alleges that the action of both groups of State officers, or the statutes under which each purports to act, is unconstitutional, then it is not one in the nature of a bill of interpleader, since complainant would thereby deny the existence of two or more claimants capable of interpleading, thus destroying the very foundation upon which a bill of interpleader or a bill in the nature thereof rests.

> *Klaber* vs. *Maryland Casualty Co.*, 69 F. (2d), 934, 937.

It is essential to the maintenance of such a suit that complainant does not dispute his liability to someone for the fund attempted to be interpleaded.

> *Connecticut General Life Insurance Co.* vs. *Yaw*, 53 F. (2d) 684, 686.
> *Smith* vs. *Mosier*, 169 Fed. 430, 442.

If, on the other hand, it alleges the presence of claims to domiciliary taxes by each group, without charging that their actions or the statutes under which they claim to act

are unconstitutional, then the bill is objectionable on the ground that it, in fact, involves the States and not the officers and is, therefore, in violation of Art. III, sec. 2 of the Constitution of the United States and section 233 of the Judicial Code (U. S. C. Title 28, sec. 341) which vest the United States Supreme Court with exclusive jurisdiction of controversies between States. And should the bill take the middle course by alleging that one or the other of the groups is acting in violation of complainant's constitutional rights, the suit then becomes one to implead citizens of another State against a State, which, of course, cannot be maintained in face of the Eleventh Amendment.

It is made perfectly clear by the many decisions of this court, that State officers may be sued, without involving the State, only where it is alleged that they are proceeding in an unauthorized manner, i. e., under color of an invalid law or in excess of their authority under a valid law. And, even *Ex Parte Young,* 209 U. S. 123, so strongly relied upon by petitioner and the District Court is not otherwise, in view of the presence in that case of unfrivolous questions involving the constitutionality, under the federal constitution, of State legislation and orders of State administrative agencies issued thereunder. This court in *Harkrader* vs. *Wadley,* 172 U. S. 148 (at p. 169) said that:

> "No case can be found where an injunction against a State officer has been upheld where it was conceded that such officer was proceeding under a valid State statute. * * *"

The only possible exception to this rule is where the *action* of the State officer is in itself alleged to be unconstitutional.

Greene vs. *Louisville & Interurban R. Co.,* 244 U. S. 499.

Reagan vs. *Farmers Loan & Trust Co.,* 154 U. S. 362.

The determination of the Circuit Court of Appeals to the effect that the bill does not allege that the tax statutes of the two States are unconstitutional, or charge that either or both of the groups of tax officials is acting in violation of the laws of their respective States, or that they have determined the question of domicile arbitrarily and without substantial evidence to support such determination, and that the suit, therefore, in substance, amounts either to an attempt to implead the States of California and Massachusetts or to implead one or the other of said States against individual citizens, seems so clearly within the foregoing principles governing suits of this nature as to leave no room for doubt.

POINT V

THIS CASE IS NOT CONTROLLED BY CITY BANK FARMERS' TRUST CO. VS. SCHNADER

The difference in the position of respondents in a suit brought under the Interpleader Act and that of defendants in an injunction suit brought under section 266 of the Judicial Code is, of course, an important element to keep in mind. In the latter there is but a single group of State officials and a single purpose to be attained, and that is to enjoin that group from carrying out some alleged unauthorized act, while in the former there are two groups of officials and there are two purposes, viz., (a) to enjoin the group acting wrongfully; and (b) to determine the tax due to the group, or to put it a little more accurately, due to the State whose officers have been found to have acted rightfully.

The case of *City Bank Farmers' Trust Co.* vs. *Schnader*, 291 U. S. 24, 293 U. S. 112, a proceeding in which it was sought to enjoin the taxing officials of the State of Penn-

sylvania from collecting a nonresident tax on the transfer of tangible personal property having a physical situs within that State is, therefore, clearly distinguishable from the instant matter. While this court upheld the jurisdiction of the District Court under section 266 of the Judicial Code (291 U. S. 24), the bill, nevertheless, on the merits, was finally dismissed (293 U. S. 112). Had it been determined that the defendants in that suit were acting improperly in their attempt to tax the transfer of the tangible personal property, permanent injunction would, of course, have issued against them, but only as individuals. Because they were acting properly and, therefore, for the State which they represented, the bill was dismissed. Whatever the disposition may be of such a case, it is clear that a State is never drawn into the litigation. Not so, however, in the case of an interpleader suit, because that group of officers which is ultimately determined to be acting properly, or rather the State for which they are acting, is entitled to a money decree to the extent of the tax found to be due to it and that State must, therefore, be brought into the suit if the litigation is to be completely terminated by awarding judgment for the successful claimant.

POINT VI

THE INTERPLEADER ACT, AS AMENDED, WAS NEVER INTENDED TO APPLY TO A SUIT OF THE NATURE OF THE ONE *SUB JUDICE*

There is no question but that this section of the Code, from the date of its first enactment on February 22, 1917 (c. 113, 39 Stat. 929), through intermediate amendments (February 25, 1925, c. 317, 43 Stat. 976; May 8, 1926, c. 273, 44 Stat. 416), down to the amendment of January 20, 1936 (c. 13, 49 Stat. 1096) was available only to insurance com-

panies or associations, and fraternal or beneficial societies. The only question, therefore, is whether Congress, under the last amendment by which it extended the benefits of the act to "any person, firm, corporation, association, or society," intended that it should encompass a suit by an executor or administrator against the taxing officials of two or more States for the purpose of judicially determining the legal domicile of a decedent and the State to which domiciliary taxes are payable.

There is nothing in the reports of the committees on the judiciary of Congress (9878 Senate Rep., Report No. 558; 9888 House Rep., Report No. 1437) which even remotely intimates that one of the purposes of the amendment was to provide a solution of the dual-domicile problem.

That the amendment was never intended to provide a forum for the settlement of disputes as to domicile is a logical inference, deducible from the absence of the usual protective and expediential measures generally thrown around suits in federal courts in which the actions of State officers are attacked. The trend of federal legislation for a great many years has been toward a reduction, rather than an extension, of the power of the lower federal courts in matters in which the States are essentially, even though not *eo nomine*, the real parties in interest. Under section 266 of the Judicial Code (U. S. C. Title 28, sec. 380) application for interlocutory as well as permanent injunction to restrain the action of any State officer must be heard and determined by three judges, at least one of whom shall be a justice of the Supreme Court or a Circuit Court judge, and for injunction to issue, a majority of the three judges must concur in granting the application. The same section also provides for direct appeal to this court from interlocutory or final orders granting or denying injunction, and for a stay of the federal proceeding at any time before final hearing if a suit shall be brought and diligently prosecuted in a State court. And under section 24 (1) of the Judicial

Code, as amended May 14, 1934 (c. 283, sec. 1, 48 Stat. 775), the power of the District Courts to issue injunctions in rate cases is taken away where there is a plain, speedy and efficient remedy at law or in equity in the State courts. And section 265 of the Judicial Code (U. S. C. Title 28, sec. 379) —legislation of long-standing—precludes the granting of injunctions to stay proceedings in any State court, excepting bankruptcy matters.

Hill vs. *Martin,* 296 U. S. 393.

That the pendulum continues to swing in this direction is evidenced by the fact that Congress in the last days of the past session amended section 24(1) of the Judicial Code so as to deprive the lower federal courts of the power to enjoin, suspend or restrain the assessment, levy or collection of any State tax where a plain, speedy and efficient remedy may be had in law or in equity in the State courts (Act of Cong. August 21, 1937, Public No. 332, c. 726). Although not applicable to the instant case, because of a savings clause as to suits already instituted, this legislation would appear, nevertheless, to be a barrier to future litigation under section 266 of the Judicial Code, and proceedings of the nature of the instant one to invoke the provisions of the interpleader section, at least where it can be established that there is a plain, speedy and efficient remedy available to the taxpayer in the State courts. In any event, it is in furtherance of the apparent policy of the Congress to leave original jurisdiction in essentially State matters to the State courts.

All of these provisions, peculiar to proceedings against State officers, are lightly brushed aside if the interpleader section of the Code be held to apply to cases of the type here involved. Under that section the case is tried in the United States District Court before a single district judge; the review is by appeal to the Circuit Court; and, instead

of affording trial of the issue in the State courts, with stay of the federal proceeding as provided by sections 24(1) and 266 of the Judicial Code, the act directs that the District Court shall have power to issue its order against claimants, enjoining them from instituting or prosecuting any suit or proceeding in any State court, any other provisions of Part I of Title 28 of the United States Code to the contrary notwithstanding. It is also to be remembered that State officers may be subjected to suit under section 266 of the Judicial Code only in the jurisdiction in which they reside, whereas here we find the process of the District Court of Massachusetts extending to officers of the State of California, residing, of course, in that State.

The weakness of the claim that this legislation may be so construed as to authorize jurisdiction over domiciliary tax disputes is clearly pointed out by the District Court and in the dissenting opinion of Judge Morton in the Circuit Court. Both appreciating, because of the inherent nature of interpleader, that a State must ultimately be drawn into the litigation, and that the lower federal courts may not, of course, proceed further when this comes to pass, suggest what seem to be novel solutions to the difficulty. The District Court frankly concedes that it may not go so far as to wholly adjudicate the rights of the respective parties in the fund attempted to be interpleaded. District Judge Brewster says (R. 37):

> "* * * It may be that ultimately the court will not be able to grant all the relief prayed for in the bill of interpleader, * * *. I do not think the court, in these proceedings, can go so far as to adjudicate the exact amount of the tax due to each State. It can only decide whether the decedent was a resident of Massachusetts or of California, * * *."

And Circuit Judge Morton would terminate the litigation by *dismissing* the suit as to the *successful group of claimants* and permanently enjoining the unsuccessful group. The reasoning supporting this disposition is set forth in the following excerpt from his opinion (R. 58):

> "* * * As to one or the other of the claimants, the plaintiff's allegation that he is acting unconstitutionally and in violation of law, is bound to fail, and as to that one the suit will then be dismissed because he will be, legally speaking, the State, of which he is an official acting in the proper performance of his legal duty; as to the other, it will appear that he is acting unconstitutionally and illegally. * * * "

What, under either solution, is to happen to the fund interpleaded, and how is the successful group of claimants to collect its tax? The only logical conclusion, as to the question of collection, is that the successful group of claimants is to be left unmolested in the assessment and collection of the tax in the same manner as if the interpleader suit had not been brought. It is not reasonable to suppose that the Congress intended to provide for interpleader in a case where the complainant could not be discharged from all liability to the successful claimant as well as to the unsuccessful one (Compare, *Connecticut General Life Insurance Co.* vs. *Yaw*, 53 F. (2d) 684, at p. 686), or for the piecemeal disposition of litigation. If the federal Interpleader Act was intended to be used simply for the purpose of ascertaining the legal domicile of complainant's testator, without a money decree for the successful claimant, it would seem that more specific words to accomplish that extraordinary end would have been used.

And there is the further question as to whether there are, in fact, "adverse claimants" present in this litigation. The inference is reasonable, from this court's denial of the right to file an original bill in the case of *New Jersey* vs. *Penn-*

sylvania, 287 U. S. 580, that the controversy in these dual-domicile cases, at least in the absence of special allegations (see *Texas* vs. *New York,* 300 U. S. 642, 643), is one of fact and law between the legal representative of the decedent and each of the claiming States and not between the States. And, incidentally, it has been said that interpleader was never intended to permit a court of equity to decide such issues arising between the complainant and those asserting claims to the property in dispute.

> *Pacific Mutual Life Ins. Co.* vs. *Lusk,* 46 F. (2d) 505, 509.

The present bill appears, in the final analysis, to be nothing more than a bill for injunction without complying with the various procedural requirements of the Judicial Code respecting actions against State officers. As conceded by the District Court and by Circuit Judge Morton, the lower federal courts in this type of suit may not go to the extent of determining the amount of the domiciliary tax and of awarding a money decree to the successful claimant. If jurisdiction exists, the court must finally dispose of the litigation by dismissing the bill as to the successful claimant, and permanently enjoining the unsuccessful ones. No decree awarding the fund and absolving the complainant from all further liability to all claimants can be entered. The ultimate object of the bill, therefore, can be nothing more than a permanent injunction against the claimants representing the non-domiciliary State.

District Judge Brewster and Judge Morton in extending the Interpleader Act to the instant situation violate a controlling principle of construction. The basis of their determination—the principle upon which the result is predicated—is found in the following excerpt from Judge Morton's dissenting opinion (R. 59):

> "* * * I think this statute should receive a liberal interpretation, and that on points which are at best rather technical and procedural in character, *doubt should be resolved in favor of jurisdiction under this statute,* which appears to be the only practical method of remedying the evil. * * *"

Of course, the applicable rule is to the contrary. As said by this court in speaking of the jurisdiction of a lower federal court:

> "* * * A cause is presumed to be without its jurisdiction unless the contrary affirmatively appears; * * *"
>
> *Thomas* vs. *Board of Trustees,* 195 U. S. 207, 210.

> "* * * it (jurisdiction) ought not to be extended by doubtful construction."
>
> *Elgin* vs. *Marshall,* 106 U. S. 578, 580.

The application of this principle is of particular significance here, since to liberally construe this legislation so as to permit the impleading of individuals against a State is to imply that Congress deliberately intended to pass an unconstitutional statute. To so imply, runs counter to the "strong presumption that the law-making body intended to act within, and not in excess of, its constitutional authority."

> *Plymouth Coal Co.* vs. *Pennsylvania,* 232 U. S. 531, 546.

While perhaps not a determining factor, it is interesting to note, in closing, that complainant would extricate itself from its alleged difficult situation by a form of proceeding which would impose upon the State entitled to collect a domiciliary tax the burden of paying complainant's costs

and a reasonable attorney's fee (see par. 7 of the prayer of the bill, R. 6). This presents the interesting question as to whether a State may be compelled to accept an amount less than the full sum of the tax to which it is lawfully entitled and to discharge the taxpayer of all further liability therefor.

It is respectfully submitted that power of such far-reaching effect and so directly in conflict with the well-established policy of Congress in regard to matters in which the States and their officers are involved, should not arise from mere inference. This section of the Judicial Code originated primarily as an aid to insurance companies, and there is nothing in the language of the amendments thereof which indicates that the section was ever intended to apply to disputed domicile cases.

CONCLUSION

There is every evidence in the opinion of the Circuit Court of Appeals of an exhaustive study of the problem presented, and in reaching the conclusion that it did it has applied only those principles which have been well-established by the repeated decisions of this court. It is respectfully submitted, therefore, that the Circuit Court of Appeals' determination properly resolves the question, and that the determination of that court should in all respects be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 34.—October Term, 1937.

Worcester County Trust Company, Executor, Petitioner, *vs.* Ray L. Riley, Controller of the State of California, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[December 6, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether the Federal Interpleader Act, § 24 (26) of the Judicial Code as amended January 20, 1936, c. 13, § 1, 49 Stat. 1096, may be availed of for the litigation and final disposition of the rival claims of two states, each asserting through its officers the right to recover death taxes on the ground that decedent was last domiciled within its boundaries.

Petitioner is the duly qualified executor named in the last will of decedent, which has been probated in Massachusetts. Ancillary administration of the estate has been granted in California. Petitioner brought the present suit in the District Court for Massachusetts, joining as defendants Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts, and respondents, officers of the State of California, all charged with the duty of administering death tax statutes of their respective states. The bill of complaint is founded upon the Interpleader Act and seeks the remedy which it affords.

Section 24 (26) confers jurisdiction on the district courts in suits of interpleader or in the nature of interpleader, by plaintiffs who are under an obligation to the amount of $500 or more, the benefits of which are demanded by two or more adverse claimants who are citizens of different states. By subsection 26 (a) "Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another." And by subsection 26 (a) (ii) and (d) complainant, upon satisfying jurisdictional requirements of the Act, and depositing the money or property in the registry of the court, or upon giving a prescribed bond,

is entitled to a decree discharging him from further liability and enjoining the claimants from further proceedings in other courts to recover the sum claimed.

The bill of complaint alleges that decedent left bank deposits and other intangibles in California and Massachusetts, a substantial part of which has come into the possession or custody of petitioner; that respondents, the California taxing officials, have determined and assert that decedent at death was domiciled in California, and that under the law of that state his estate is subject to death taxes upon all his intangibles; that respondents threaten to assess and collect there a tax in excess of any which would be due if decedent were domiciled in Massachusetts; that the Massachusetts Commissioner, in behalf of the state, asserts a similar claim that decedent at death was domiciled in Massachusetts, and that his estate is subject to taxes there upon all his intangibles; that it is impossible in law and in fact for decedent to have been domiciled in both states at the time of his death, or for his estate to be subject to death taxes in both states as asserted; and that the attempted collection of the tax is a threatened deprivation of property without due process of law and a denial of equal protection of the laws. Petitioner prays that the Court order respondent officials of the two states to interplead their respective claims for the tax; that the Court determine the domicil of decedent, the amount of the tax, and the person or persons to whom it is payable; and that respondents be enjoined from any other proceedings to collect it.

Respondents, the California officers, appeared specially and moved to dismiss the complaint upon the ground, among others, that the suit was brought against respondents in their official capacity, and was in substance a suit against the state forbidden by the Eleventh Amendment. The district court overruled this contention and granted a temporary injunction restraining defendants until further order of the court, from taking any action to assess the tax. The Court of Appeals for the First Circuit reversed, 89 F. (2d) 59, holding that the maintenance of the suit is an infringement of the Eleventh Amendment, which provides that "The judicial power . . . shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state. . . . " We granted certiorari, 299 U. S. 567, the decision below being of an important question of federal law which has not been but should be settled by this Court. Supreme Court Rules, 38 (5) (b).

Petitioner does not deny that a suit nominally against individuals, but restraining or otherwise affecting their action as state officers, may be in substance a suit against the state, which the Constitution forbids, *Louisiana* v. *Jumel*, 107 U. S. 711; *Hagood* v. *Southern*, 117 U. S. 52; *In re Ayers*, 123 U. S. 443; *North Carolina* v. *Temple*, 134 U. S. 22, 30; *Smith* v. *Reeves*, 178 U. S. 436; *Lankford* v. *Platte Iron Works*, 235 U. S. 461; *Ex parte State of New York, No. 1*, 256 U. S. 490, 500; *Missouri* v. *Fiske*, 290 U. S. 18, 28; see *Cunningham* v. *Macon & Brunswick R. Co.*, 109 U. S. 446; cf. *Wells* v. *Roper*, 246 U. S. 335, or that generally suits to restrain action of state officials can, consistently with the constitutional prohibition, be prosecuted only when the action sought to be restrained is without the authority of state law or contravenes the statutes or Constitution of the United States. Cf. *Ex parte Young*, 209 U. S. 123; *Scully* v. *Bird*, 209 U. S. 481; *Old Colony Trust Co.* v. *Seattle*, 271 U. S. 426, with *Louisiana* v. *Jumel, supra; Hagood* v. *Southern, supra; In re Ayers, supra; Lankford* v. *Platte Iron Works, supra.* The Eleventh Amendment, which denies to the citizen the right to resort to a federal court to compel or restrain state action, does not preclude suit against a wrongdoer merely because he asserts that his acts are within an official authority which the state does not confer.

Petitioner's contention is that here the prospective official action of respondents involves a threatened violation of the Constitution for which state law can afford no sanction. It is said that as the officers of each state assert the right to collect the tax out of decedent's property within the state, they may succeed in establishing that right by a judicial determination in each that decedent was last domiciled there, cf. *Dorrance's Estate*, 309 Pa. 151; *In re Estate of Dorrance*, 115 N. J. Eq. 268; 116 N. J. Eq. 204, with *New Jersey* v. *Pennsylvania*, 287 U. S. 580; *Dorrance* v. *Pennsylvania*, 287 U. S. 660; *Hill* v. *Martin*, 296 U. S. 393, although he could not be domiciled in both; that neither state could constitutionally authorize its officials to impose the tax if decedent was last domiciled elsewhere, and petitioner is thus exposed to the danger of double taxation, which the Constitution forbids. See *First National Bank* v. *Maine*, 284 U. S. 312; *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204. As those officials threaten acts whose consequence may be taxation which is unauthorized by any valid state enactment, petitioner insists that the suit brought to restrain such action does not run against the state.

But this argument confuses the possibility of conflict of decisions of the courts of the two states, which the Constitution does not forestall, with other types of action by state officers which, because it passes beyond the limits of a lawful authority, is within the reach of the federal judicial power notwithstanding the Eleventh Amendment. This Court has held that state statutes, construed to impose death taxes upon the intangibles of decedents domiciled elsewhere, infringe the Fourteenth Amendment, and it has accordingly reversed judgments of state courts enforcing such liability. *First National Bank* v. *Maine, supra; Farmers Loan & Trust Co.* v. *Minnesota, supra.* But petitioner does not assert that there are such statutes in California or Massachusetts, or that the courts in those states have ever held or threaten to hold that their laws taxing inheritances apply to intangibles of those domiciled in other states.

Although the bill of complaint states that respondents California officials "have determined" that decedent was domiciled in California, it is not contended that they have or are assuming authority to assess the tax, independently of the judgment of a court. Under California statutes, inheritance taxes are assessed by judicial proceedings resulting, after full opportunity for presentation of evidence and a hearing, in a judgment which is reviewable on appeal by the state courts, and by this Court if it involves any denial of federal right. §§ 14, 15, 16, 17 and 18, Cal. Inheritance Tax Act of June 3, 1921, Stats. 1921, p. 1500, as amended; see *Stebbins* v. *Riley,* 268 U. S. 137; *Estate of Haskins,* 170 Cal. 267; *Estate of Brown,* 196 Cal. 114.

Petitioner does not contend that respondents, the California officers, propose to do more than invoke the action of its courts to assess a lawful tax and to seek there a judicial determination that decedent was domiciled in California as the basis of its power to impose the tax. Nor is it denied that in so doing they are acting in the performance of official duty imposed upon them by state statutes, which conform to all constitutional requirements. Petitioner's real concern is that the judgment of the California court, if it should decide that decedent was domiciled there, may be erroneous or may conflict with that of the Massachusetts courts. But conflicting decisions upon the same issue of fact do not necessarily connote erroneous judicial action. Differences in proof and

the latitude necessarily allowed to the trier of fact in each case to weigh and draw inferences from evidence and to pass upon the credibility of witnesses, might lead an appellate court to conclude that in none is the judgment erroneous. In any case the Constitution of the United States does not guarantee that the decision of state courts shall be free from error, *Central Land Co.* v. *Laidley*, 159 U. S. 103; *Tracy* v. *Ginzberg*, 205 U. S. 170, or require that pronouncements shall be consistent. *Milwaukee Electric Railway & Light Co.* v. *Wisconsin*, 252 U. S. 100, 106. Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicil, where the exertion of state power is dependent upon domicil within its boundaries. *Thormann* v. *Frame*, 176 U. S. 350; *Overby* v. *Gordon*, 177 U. S. 214; *Burbank* v. *Ernst*, 232 U. S. 162; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394; *Iowa* v. *Slimmer*, 248 U. S. 115, 120, 121; cf. *Tilt* v. *Kelsey*, 207 U. S. 43. Hence it cannot be said that the threatened action of respondents involves any breach of state law or of the laws or Constitution of the United States. Since the proposed action is the performance of a duty imposed by the statute of the state upon state officials through whom alone the state can act, restraint of their action, which the bill of complaint prays, is restraint of state action, and the suit is in substance one against the state which the Eleventh Amendment forbids. We do not pass on the construction of the Interpleader Act or its applicability in other respects.

Unlike that in *Ex parte Young*, *supra*, and in the many cases which have followed it, the present suit is not founded on the asserted unconstitutionality of any state statute and the consequent want of lawful authority for official action taken under it. In *City Bank Farmers Trust Co.* v. *Schnader*, 291 U. S. 24, on which petitioner relies, it was held that the bill of complaint stated a cause of action in equity to enjoin a state official from proceeding to assess and collect an inheritance tax upon chattels alleged to have no tax situs within the state. The objection that the suit was one against the state within the meaning of the Eleventh Amendment was not urged or considered on the appeal to this Court.

Affirmed.